

No. 11760

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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UNIVERSAL INSURANCE COMPANY,  
a corporation,

Appellant,

vs.

FRANCES M. STEINBACH, also known as  
FRANCIS M. STEINBACH, and CAROLYN  
S. STEINBACH,

Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the District of Oregon

JAN 28 1948

PAUL R. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

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Portland, Oregon  
For Appellant.

GEO. P. WINSLOW,  
Tillamook, Oregon and

W. K. PHILLIPS,  
Public Service Bldg.,  
Portland, Oregon,  
For Appellees.

B. G. S. SKULASON,  
Public Service Bldg.,  
Portland, Oregon,  
For 3rd Party Defendant.

In the United States District Court for the  
District of Oregon.

Civil No. 3087

FRANCIS M. STEINBACH and CAROLYN S.  
STEINBACH,

Plaintiffs,

vs.

UNIVERSAL INSURANCE COMPANY, a  
corporation.

Defendant.

### COMPLAINT

Plaintiff for cause of action alleges:

#### I.

That during the times herein mentioned the plaintiffs were the owners of a suction dredge named "WISHRAM."

#### II.

That the defendant, Universal Insurance Company, is a corporation, organized and existing under the laws of the State of New Jersey, and authorized to write and enter into the contract hereinafter set forth.

#### III.

That on or about the 6th day of June, 1945 the defendant, for value received, issued its policy of insurance No. P. C. 50295 to plaintiffs wherein and whereby the defendant insured the hull, tackle, apparel, furniture, machinery, boilers, and everything



connected with the said suction dredge Wishram in the sum of \$12,500 against loss cause by stranding, sinking, colliding, and other perils of the sea and water for a period of from the 6th day of June, 1945 to the 6th day of June, 1946.

## IV.

That on or about the 14th day of July, 1945 said policy of insurance issued by defendant in favor of plaintiffs was ammended so that the same applied while said dredge was confined to the waters of Nehalem Bay and tributaries of Tillamook County, Oregon. [1\*]

## V.

That thereafter on or about the 24th day of October, 1945 said policy of insurance was further ammended wherein and whereby the defendant, for value received, agreed to and did extend the terms and protection, under said policy, to cover one trip and voyage from Nehalem Bay to Tillamook Bay.

## VI.

That on or about the 1st day of November, 1945, the said suction dredge Wishram was taken from said Nehalem Bay on a trip and voyage to the said Tillamook Bay; that during said voyage the said dredge Wishram became stranded upon the outer rocks of the jetty leading into the Tillamook Bay and was immediately broken up and demolished by the waves and other elements and became an entire loss.

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

## VII.

That at the time of said loss suction dredge Wishram was reasonably worth considerable in excess of \$12,500.

## VIII.

That under the terms of the agreement whereby the defendant extended the terms of said policy of insurance to cover the voyage from Nehalom Bay to Tillamook Bay, plaintiffs were obligated to pay to defendant, in case of loss or damage, the further sum of \$1,062.50, on account of premium, thereby reducing the amount of said insurance and defendant's liability to \$11,437.50.

## IX.

That defendant was promptly, fully, and completely notified of said loss and plaintiffs furnished to defendants full and complete information concerning said loss and otherwise complied with all requests of defendant; that defendant on November 30, 1945 notified plaintiffs that it denied all liability for loss under said policy, and, ever since [2] said date, the defendant has refused to take any steps to adjust and pay any part of said loss and has ever since continued to deny all liability for said loss.

Wherefore, plaintiffs demand judgment against the defendant for the sum of \$11,437.50 with interest thereon at the rate of 6% per annum from November 30, 1945, together with the costs and disbursements of this action.

GEO. P. WINSLOW,

Attorney for Plaintiffs.

[Endorsed]: Filed March 30, 1946.

State of Oregon,  
County of Tillamook—ss.

I, Carolyn S. Steinbach being first duly sworn,  
say that I am one of the plaintiffs in the within en-  
titled cause and that foregoing complaint is true as  
I verily believe.

/s/ CAROLYNE S. STEINBACH,

Subscribed and sworn before me this 29th day  
of March, 1946.

[Seal] /s/ GEO. P. WINSLOW,

Notary Public for Oregon.

My Commission expires May 11, 1947.

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[Title of District Court and Cause.]

### SUPPLEMENTAL COMPLAINT

Come now the plaintiffs and for their supple-  
mental complaint in the above entitled cause allege  
as follows:

#### I.

Permission of the Court first being had to file  
this the plaintiffs' supplemental complaint, the  
plaintiffs do by virtue of Rule No. X adopt by ref-  
erence each and every allegation, part and parcel of  
their complaint heretofore filed in this cause to-  
gether with each and every allegation, part and  
parcel of the plaintiffs' reply heretofore filed in this

cause and make them a part and parcel of this their supplementary complaint as though particularly set forth and alleged at this place.

## II.

That this cause is an action against the defendant, Universal Insurance Company, upon a policy of insurance written by the said insurance company naming the above plaintiffs as insureds and that a loss occurred under the said policy on or about the 1st day of November, 1945. That the defendant was immediately notified of the said loss and did, on the 30th day of November, 1945, deny all liability to these plaintiffs for the said loss under the policy, and ever since said date has refused [4] to settle the said claim or make any adjustment or pay any part or parcel thereof, and have and do now continue to deny liability to these plaintiffs under the said policy for the said loss.

## III.

That a period of six months has now expired since the denial of liability to these plaintiffs by the said defendant insurance company and the plaintiffs have been forced to and have employed attorneys for the purpose of collecting their loss and damages under and by virtue of the said insurance policy. That a reasonable attorney's fee to be allowed these plaintiffs as attorney's fees against the defendant in this case is the sum of Two Thousand Two Hundred Eighty-seven and 50/100 (\$2287.50) Dollars.

Wherefore, these plaintiffs demand judgment against the defendant for the full sum of Eleven Thousand Four Hundred Forty-seven and 50/100 (\$11,447.50) Dollars, with interest thereon at the rate of six per cent (6%) per annum from the 30th day of November, 1945, as prayed for in the plaintiffs' complaint herein together with an additional sum of Two Thousand Two Hundred Eighty-seven and 50/100 (\$2287.50) Dollars attorney's fees.

GEO. H. WINSLOW,  
W. K. PHILLIPS,  
Attorneys for Plaintiffs.

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State of Oregon,  
County of Multnomah—ss.

Due service of the foregoing Supplemental Complaint by copy as prescribed by law is hereby admitted, at Portland, Oregon, this 28th day of June, 1946.

MacCORMAC SNOW,  
Attorney for Defendant G.K.

[Endorsed]: Filed June 29, 1946.

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[Title of District Court and Cause.]

### REPLY

Comes now the plaintiffs and for reply to all the

allegations of new matter set forth in defendant's answer and denies each and every allegation therein contained except as the same conform to the express allegations of plaintiffs' complaint or are hereinafter expressly admitted.

Further replying plaintiffs allege:

I.

That prior to the 17th day of October, 1945 the owners of said Suction Dredge "Wishram" applied to defendant for an extension and amendment to said insurance policy, mentioned and referred to in the complaint and answer herein, to cover towage of said Suction Dredge "Wishram" from Nehalem Bay to Tillamook Bay, Tillamook County, Oregon; that defendant agreed to grant said extension and on October 17, 1945, caused the following letter to be written and mailed to the owners' representative:

"Broadway 0523. Addison P. Knapp Co., General Insurance, Henry Building, Portland 4, Oregon.

October 17, 1945.

"Captain Hugh Corrigan,  
General Delivery,  
Rockaway, Oregon.

"Dear Captain:

"Emmett Rathbun has requested me to give you a quotation for extending the hull insur-



ance policy covering the dredge 'Wishram' while moving from Nehalem Bay to Tillamook Bay.

"Generally speaking the marine underwriters will not cover outside trips of this nature after October 15. However, in view of the sort run I will take the responsibility of granting the coverage at 10 per cent, to return 8½ per cent upon safe arrival; if you will pick the weather and only make the trip when conditions are entirely safe.

"It would of course, be necessary for us to have the dredge surveyed before she leaves Nehalem Bay so if you wish the protection, kindly advise in advance so that necessary arrangements can be made with a qualified surveyor.

"Yours very truly,

/s/ ADDISON P. KNAPP.

"APK:td"

## II.

That thereafter said Suction Dredge "Wishram" was placed in condition for towage from Nehalem Bay to Tillamook Bay, a distance of about 11 miles, and was surveyed and inspected by an authorized representative of defendant, namely, Emmett Rathbun; that defendant's surveyor approved the condition of said dredge and authorized and directed that said tow be made as early as possible and during calm weather; said survey and approval of the condition of said dredge "Wishram" was made prior to

October 24, 1945; that thereafter the defendant insurance company submitted to plaintiffs the following statement:

“Portland 4, Oregon,

“Frances M. & Carolyne S. Steinbach,  
c/o Captain J. H. Corgan,  
General Delivery,  
Garibaldi, Ore.

October a/c 1945

“In Account With Addison P. Knapp Co., General Insurance, Henry Building. [8]

“October 24th—Universal Policy PC 50295  
—Dredge ‘Wishram.’

“Additional Nehalem to Tillamook. . \$1250.00  
To be returned safe arrival, no claim \$1062.50

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\$ 187.50”

That thereafter on October 30, 1945 the sum of \$187.50 was paid to defendant by plaintiffs and accepted by defendant to cover the premium charged by defendant for the extended insurance covering the towage from Nehalem Bay to Tillamook Bay.

### III.

That on November 1, 1945, when the weather was calm, one Otto Berg, who owned and operated a qualified tow boat, was employed to tow said Suction Dredge “Wishram” from Nehalem Bay to Tillamook Bay; that said dredge was lost on said voyage as alleged in plaintiffs’ complaint.



IV.

That on October 24, 1945, the defendant prepared the following endorsement:

“Endorsement  
Suction Dredge ‘Wishram’

“For and in consideration of an additional premium of \$1250 the within policy is hereby extended to cover one trip from Nealem Bay to Tillamook Bay in tow of the tug ‘Umpqua Chief’. In event of safe arrival of the insured dredge at Tillamook Bay and no claim resulting from damage sustained during voyage insured by this endorsement the Assureds shall be entitled to a return of \$1062.50 from the Underwriters.

“After arrival at Tillamook Bay insured dredge shall be warranted confined to the waters of Tillamook Bay and its tributaries.

“All other terms and conditions of this policy remaining unchanged.

“This slip is attached to and forms part of Policy No. PC-50295 of the Universal Insurance Company, Issued to Frances M. and Carolyn S. Steinbach. Dated at October 24, 1945.

ADDISON P. KNAPP CO.  
/s/ ADDISON P. KNAPP.”

## V.

That said endorsement so prepared by defendant under date of October 24, 1945 was retained by the defendant until October 30, 1945; that on October 30, 1945 the defendant deposited [9] said endorsement in the U. S. mail at Portland, Oregon, addressed to Captain J. H. Corgan, General Delivery, Garibaldi, Oregon; that said endorsement was accompanied by a letter in words and figures as follows, to-wit:

“BRoadway 0523. Addison P. Knapp Co., General Insurance, Henry Building, Portland 4, Oregon.

October 30, 1945.

“Captain J. H. Corgan,  
General Delivery,  
Garibaldi, Oregon.

“Dear Capt. Corgan:

“In accordance with your recent instructions, we are sending you herewith endorsement applying to Universal Policy PC 50295 extending it to cover one trip of the Dredge ‘Wishram’ while being towed from Nehalem Bay to Tillamook by the tug ‘Umpqua Chief’.

“Surveyor Rathbun has approved this tow only if made during calm weather. Under the circumstances, I trust you will be very careful in picking the weather for the trip.

“Yours very truly,

/s/ ADDISON P. KNAPP.

“APK:td. Encl.”

## VI.

That J. H. Corgan, to whom defendant's letter of October 30, 1945 was addressed, is a son of Captain Hugh Corgan; that said son, J. H. Corgan, never had any negotiations with defendant in regard to the extension of said insurance to cover towage of said dredge from Nehalem Bay to Tillamook Bay; that both Captain Hugh Corgan and his son, J. H. Corgan, during the time herein mentioned resided at Rockaway, Oregon, and their postoffice address was General Delivery, Rockaway, Oregon, all of which was well-known to defendant; that Captain Hugh Corgan or his son, J. H. Corgan [10] never did reside at Garibaldi, Oregon and never authorized the sending of any mail to them at Garibaldi, Oregon; that the letter of the defendant to Captain Hugh Corgan under date of October 17, 1945, set forth in full in paragraph I of this reply, contained the correct address of the said Captain Corgan; that the letter of defendant dated October 30, 1945 was sent by defendant to Garibaldi, Oregon, through the sole negligence of defendant and by reason of defendant's said negligence the same was never delivered to the said J. H. Corgan or to anyone else until long after the loss of the said Suction Dredge "Wishram."

## VII.

That at no time prior to the loss of said Suction Dredge "Wishram" did the defendant or any of its representatives mention or suggest that the exten-

tion of said insurance to cover said towage from Nehalem Bay to Tillamook Bay was conditioned on the same being towed by the tug "Umpqua Chief"; that in truth and in fact the said tug, "Umpqua Chief" was not then available to make said tow and was engaged in other work more than 300 miles distant from Nehalem Bay, all of which was well known to the defendant and its representatives, or should have been known to defendant and its representatives.

### VIII.

That at the time the said Suction Dredge "Wishram" was surveyed and approved by defendant for said voyage from Nehalem Bay to Tillamook Bay, the question of what boat would tow said dredge on said voyage was discussed, and defendant and its representatives were then informed by a representative of the owners of said Suction Dredge "Wishram" that an effort was being made to obtain a certain fish boat known as "Faymar" owned by one Davenport, and that said boat "Faymar" or some other similar boat would be used for said tow; that defendant's representative and surveyor then and there expressed satisfaction [11] with the boat "Faymar" or any other similar boat; that thereafter the owner of said boat "Faymar" notified plaintiffs that he was unable to make said towage and thereupon one Otto Berg, the owner of a fish boat named "Julia D", was employed to tow said dredge; that

the said boat "Julia D" was more powerful and better equipped for towing said dredge than the said boat "Faymar".

### IX.

That the payment of the sum of \$187.50 to defendant to cover the premium charged by defendant for extending said insurance as alleged in paragraph II of this reply was made by check; that said check was held by the defendant until November 8, 1945 when the defendant cashed said check; that at the time defendant cashed said check covering said premium, and for several days prior thereto, said defendant had full and complete information about the loss of said dredge "Wishram" and that the same was being towed by the boat "Julia D" at the time of said loss; that defendant retained the proceeds of said check without any offer to return the same until the 30th day of November, 1945.

### X.

That had it not been for the negligence of defendant in sending its letters of October 30, 1945, set forth in paragraph V of this reply, to Garibaldi, Oregon, plaintiffs would have received the same on October 31, 1945 and before said voyage was commenced; that on November 1, 1945 defendant was notified of the loss of said dredge "Wishram," and plaintiffs thereupon made demand upon defendant for the payment of the full amount of said insurance; that on November 7, 1945 the defendant for the first time informed plaintiffs that it had prepared an endorsement requiring said tow to be made

by the "Umpqua Chief", and that said endorsement had been mailed to plaintiffs' representative on [12] October 30; that defendant thereupon also informed plaintiffs that said endorsement, through error of the defendant, had been misdirected and sent to Garibaldi, Oregon instead of Rockaway, Oregon; that plaintiffs' representative immediately called at the Post Office in Garibaldi, Oregon and thereupon obtained defendant's letter of date of October 30, 1945, and the endorsement set forth in paragraph IV of this reply.

## XI.

That by reason of the facts hereinbefore set forth the defendant ought to be and is estopped from alleging or claiming that there was any condition attached to the extension of said insurance covering the towage of said dredge "Wishram" from Nehalem Bay to Tillamook Bay, requiring that said dredge should be towed by the boat "Umpqua Chief."

## XII.

That the provision contained in said endorsement, herein mentioned and set forth in paragraph IV of this reply, requiring said tow to be made by the "Umpqua Chief" was placed in said endorsement without the knowledge or consent of plaintiffs, and plaintiffs had no knowledge or information concerning the same until seven days after the loss of said Dredge "Wishram"; that said provision was placed in said endorsement by the defendant contrary to all



previous negotiations and understandings between plaintiffs and defendant in reference to said voyage; that said provision was placed in said endorsement by defendant through gross error or fraudulently; that the following language contained in said endorsement to-wit, "in tow of the tug 'Umpqua Chief', should be stricken therefrom, and said endorsement should be reformed by striking said language just quoted therefrom.

Wherefore, plaintiffs having fully replied demand judgment against the defendant in accordance with plaintiffs' complaint; [13] plaintiffs also pray that the endorsement set forth in paragraph IV of this reply be reformed by striking out and eliminating therefrom the following language to-wit, "in tow of the tug 'Umpqua Chief'."

Plaintiffs further request that this cause be tried before a jury and demand is hereby made by plaintiffs for a jury trial.

/s/ GEO. P. WINSLOW,

/s/ W. K. PHILLIPS,

Attorneys for Plaintiffs.

[Endorsed]: Filed June 10, 1946.

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State of Oregon,  
County of Tillamook—ss.

I, Frances M. Steinbach, being first duly sworn, say that I am one of the plaintiffs in the within en-

titled cause and that the foregoing reply is true as I verily believe.

/s/ FRANCES M. STEINBACH.

Subscribed and sworn before me this 5th day of June, 1946.

[Seal]

/s/ GEO. P. WINSLOW,  
Notary Public for Oregon.

My Commission Expires May 11, 1947.

Services of the foregoing, by receipt of a duly certified copy thereof, in Multnomah County on this 10th day of June, 1946, is hereby admitted.

/s/ MacCORMAC SNOW,  
Attorney for Defendant.

[Endorsed]: Filed June 10, 1946.

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[Title of District Court and Cause.]

### AMENDED ANSWER

Comes the defendant, leave of the court being first had, and files this its amended answer, and thereupon admits, denies and alleges as follows:

The defendant answering the original complaint herein, admits, denies and alleges as follows:

#### I.

Defendant denies each and every allegation of Paragraph I of the complaint.



II.

Admits paragraph II of said complaint.

III.

Admits the allegations of paragraph III of the complaint except that the said policy on June 6, 1945, covered the said dredge only after arrival and while operating at Nehalem Bay, Oregon.

IV.

Answering paragraph IV of said complaint defendant admits that on or about July 14, 1945, the said policy of insurance was amended to cover the said dredge at Nehalem Bay, Oregon, and said amendment provided that from July 23, 1945, said dredge should be warranted confined to the waters of Nehalem Bay and its tributaries, and defendant denies that the said dredge was insured by said policy [16] in the waters or tributaries of Tillamook County, Oregon.

V.

Answering paragraph V of the complaint defendant denies that the said paragraph correctly alleges the amendment to said policy made by the endorsement thereon dated October 24, 1945, and alleges that prior to said date plaintiffs by their agents stated to defendant's agents that they desired the extension of said policy to cover towage of said dredge from Nehalem Bay to Tillamook Bay and represented to defendant's agents that the said towage would be done by the Tug "Umpqua Chief".

The defendant by its agents, being content with the "Umpqua Chief" as the said towing vessel, accepted the said insurance risk on behalf of the defendant, and reinsured a portion of the same on behalf of the defendant on the basis that the said towage of said dredge would be performed by the Tug "Umpqua Chief", and issued and mailed to plaintiffs' agent the said endorsement of October 24, 1945, which is in words and figures as follows:

"Suction Dredge 'Wishram'  
Endorsement

For and in consideration of an additional premium of \$1250 the within policy is hereby extended to cover one trip from Nehalem Bay to Tillamook Bay in tow of the tug "Umpqua Chief". In event of safe arrival of the insured dredge at Tillamook Bay and no claim resulting from damage sustained during voyage insured by this endorsement the Assureds shall be entitled to a return of \$1062.50 from the Underwriters.

After arrival at Tillamook Bay insured dredge shall be warranted confined to the waters of Tillamook Bay and its tributaries.

All other terms and conditions of this policy remaining unchanged.

This slip is attached to and forms part of Policy No. PC 50295, of the Universal Insur-

ance Company, issued to Frances M. and Carolyn S. Steinbach, Dated at October 24, 1945.

ADDISON P. KNAPP CO.

By ADDISON P. KNAPP." [17]

## VI.

Answering paragraph VI of said complaint defendant admits that on or about November 1, 1945, the said dredge "Wishram" became stranded on the rocks of the jetty at Tillamook Bay and was broken up and demolished and became an entire loss. Defendant alleges that on said day the plaintiffs attempted to have said dredge towed from Nehalem Bay to Tillamook Bay but did not employ the said Tug "Umpqua Chief" to conduct said towage, but employed the fish boat "Julia D" to perform said towage. Defendant further asserts that the said dredge was lost in the said attempted towage by said "Julia D" and that the said "Umpqua Chief" had no part in said towage.

## VII.

Answering paragraph VII of said complaint the defendant admits that at the time of said loss the "Wishram" was reasonably worth the sum of \$12,500.00 but denies that the said dredge was worth more than that sum.

## VIII.

Answering paragraph VIII of said complaint the defendant denies that the premium arrangements

of said policy were as set forth in said paragraph VIII and alleges that the same were as set forth in the above quoted endorsement of October 24, 1945. At the time of said attempted voyage plaintiffs paid the defendant the sum of \$187.50 on account of said premium. Defendant received the same before learning that said towage from Nehalem Bay to Tillamook Bay was attempted by the fish boat "Julia D" instead of by the tug "Umpqua Chief". Upon learning that the said towage had been attempted by the fish boat "Julia D" the defendant returned the said \$187.50 to the plaintiffs in the form of a check for the reason that because of the breach of warranty by the use of the fish boat "Julia D" instead of the tug "Umpqua Chief", and for other reasons, the defendant was relieved of all liability under the said policy for the said loss of the said dredge. The plaintiffs, however, [18] thereafter returned to defendant the said check for \$187.50 and the defendant has heretofore paid the said sum into the registry of this court for and on behalf of the plaintiffs.

## IX.

Answering paragraph IX of said complaint the defendant denies that it was promptly furnished with information that the said towage from Nehalem Bay to Tillamook Bay had been attempted with the aid of the "Julia D" instead of the "Umpqua Chief" and therefore denies each and all allegations of notice contained in said paragraph IX. Defendant further denies that the plaintiffs performed

their duties under said policy in that the plaintiffs having represent and warranted that the towage from Nehalem Bay to Tillamook Bay would be undertaken by the tug "Umpqua Chief" thereafter caused said towage to be undertaken by the said fish boat "Julia D". The defendant therefore denies each and all of the allegations of paragraph IX of said complaint.

The defendant in answer to the Supplemental Complaint herein, admits, denies and alleges as follows:

### I.

Answering paragraph I of the Supplemental Complaint the defendant hereby adopts by reference each and all of its admissions and denials in its foregoing answer to the original complaint, and repeats and makes said admissions and denials a part of this, its answer to the Supplemental Complaint.

### II.

Answering paragraph II of the Supplemental Complaint defendant admits the allegations of said paragraph II, except that defendant denies that the defendant was immediately or for a considerable period of time notified of the loss therein referred to. [19]

### III.

Answering paragraph III of the Supplemental Complaint the defendant admits that six months have expired since the defendant's denial of liability

to the plaintiffs upon the said policy of marine insurance but denies that the plaintiffs have been forced to employ attorneys to bring suit under said policy and denies that the reasonable fee of the plaintiff's attorney in this action amounts to \$2,287.50 or any other sum.

Defendant for answer to the reply of the plaintiffs herein, admits, denies and alleges as follows:

### I.

Answering paragraph I of said reply defendant admits that its agent sent a letter to Captain Hugh Corgan at Rockaway, Oregon, dated October 17, 1945, and that the letter set out in paragraph I of said reply is a substantial copy of said letter. Defendant further admits that prior to said time certain negotiations were had with the said Captain Corgan looking toward the issuance of an insurance policy covering the dredge "Wishram" but the defendant does not have sufficient information on which to form a belief as to whom Captain Corgan then represented and therefore denies that he represented the owners of said suction dredge and puts the plaintiffs to the proof of their allegations on that behalf. And the defendant denies each and every other allegation of paragraph I of said reply except as herein expressly admitted. ..

### II.

Answering paragraph II of said reply defendant denies that the suction dredge "Wishram" was placed in condition for towage from Nehalem



Bay to Tillamook Bay. Defendant admits that defendant's surveyor approved the condition of the dredge and authorized and directed that the towage be made as early as possible and during calm weather and admits that said survey and approval was made prior to October [20] 24, 1945. Defendant, however, denies that said survey was complete or that said dredge was ever placed in condition for said towage upon the ground that the hawser with which said towage was later attempted was never exhibited to Emmett Rathbun or any other representative of the defendant for seurvey and said Captain Hugh Corgan on behalf of the purported owners of the dredge then represented to the said Emmett Rathbun that the towage from Nehalem Bay to Tillamook Bay would be undertaken by the "Umpqua Chief", using the hawser belonging to the tug "Umpqua Chief", and the said Rathbun being content on behalf of the defendant with the hawser of the "Umpqua Chief" did not survey any hawser on board the "Wishram" and was never shown by the said Captain Corgan or anybody else the hawser on board the dredge "Wishram". Defendant that a bill sent out substantially as stated in said Paragraph II and admits that the sum of \$187.50 was paid to defendant but denies that the same was paid by the plaintiffs and denies that the said payment was accepted by the defendant as a premium for extended insurance from Nehalem Bay to Tillamook Bay or for any other purpose. Defendant denies each and every aallegation of the said paragraph II except as expressly admitted herein.

## III.

Answering paragraph III of said reply the defendant admits that the said dredge was lost on an attempted voyage from Nehalem Bay to Tillamook Bay on or about November 1, 1945, but denies that the weather was calm on said day and denies that Otto Berg owned or operated any qualified tow boat. Defendant admits that Captain Corgan or someone on behalf of the purported owners of said dredge employed a boat of which Otto Berg was the purported owners to attempt to tow said dredge "Wishram" from Nehalem Bay to Tillamook Bay but denies that said fish boat was a qualified tow boat or any other kind of a tow boat. Defendant denies each and every allegation of paragraph III of said reply except as specifically admitted herein. [21]

## IV.

Answering paragraph IV of said reply admits that the defendant prepared an endorsement to the marine insurance policy which is the subject of this action and that the copy of said endorsement appearing in said paragraph IV is substantially a correct copy thereof but denies that the defendant prepared said endorsement on October 24, 1945, and denies each and every allegation of said paragraph IV except as specifically admitted herein.

## V.

Defendant admits that its agents on October 30, 1945, sent the said endorsement in the United States



mail under cover of a letter of that date, a substantially true copy of which is set forth in said reply, but denies each and every other allegation of paragraph V except as expressly admitted herein.

## VI.

Answering paragraph VI of said reply the defendant admits that Captain Hugh Corgan has a son by the name of J. H. Corgan and that the said J. H. Corgan never had any negotiations with the defendant in regard to the extension of said insurance to cover towage of said dredge from Nehalem Bay to Tillamook Bay. Defendant denies knowledge and information sufficient to form a belief as to whether Captain Hugh Corgan and the said J. H. Corgan during the time mentioned in said reply resided at Rockaway or elsewhere or that neither of them then resided at Garibaldi, Oregon. Defendant denies that said letter of October 30 was sent by its agent to Garibaldi instead of to Rockaway through any negligence of the defendant and denies knowledge or information sufficient to form a belief as to when the same was delivered to J. H. Corgan or Captain Hugh Corgan. Defendant denies each and every allegation in paragraph VI of said reply except as expressly admitted herein. [22]

## VII.

The defendant denies that prior to the loss of the dredge "Wishram" neither the defendant nor any of its representatives suggested that the extension of said insurance policy to cover towage from Neha-

lem Bay to Tillamook Bay was conditioned on the dredge being towed by the tug "Umpqua Chief". Defendant denies that the tug "Umpqua Chief" was not then available to make said towage and denies that said "Umpqua Chief" was more than three hundred miles distant from Nehalem Bay or distant at all from Nehalem Bay but denies that the exact location of the "Umpqua Chief" was known to the defendant or its representatives at any one particular time during the said negotiations. Defendant denies each and every allegation of paragraph VII of said reply except as expressly admitted herein.

#### VIII.

Answering paragraph VIII of said reply defendant denies that at the time of the alleged survey of the dredge "Wishram", which defendant also denies by reason of the fact that no hawser was surveyed, the said Captain Corgan or anybody on behalf of the purported owners of the "Wishram" stated that a fish boat known as the "Faymar" would be used for said towage and denies that any representative of the defendant at any time approved the "Faymar" or any similar boat. Defendant has no information as to whether the owner of the "Faymar" notified the plaintiffs that he was unable to make said towage or whether the said owner recommended the fish boat "Julia D" and denies the allegations to that effect and puts plaintiffs to the proof thereof, nor does the defendant have any knowledge or information as to whether the "Julia D" or the "Faymar" is the more powerful, and de-

nies the said allegation and puts the plaintiffs to the proof thereof. Defendant denies each and every allegation of paragraph VIII except as expressly admitted herein. [23]

### IX.

Answering paragraph IX of said reply, the defendant admits that its agent received the sum of \$187.50, purporting to cover the premium charged by the defendant for extending said insurance, and that defendant cashed the check on or about the time alleged. Defendant admits that on or about November 30, 1945, defendant returned the proceeds of said check to the plaintiffs and that the check of defendant's agent was thereafter returned to the said agent. Defendant has heretofore paid the said sum of \$187.50 into the registry of this court. Defendant denies each and every allegation of said paragraph IX of the reply except as expressly admitted herein.

### X.

Answering paragraph X of said reply, defendant denies the alleged negligence of its agent and denies that on November 7, 1945, the defendant for the first time informed the plaintiff that it was prepared an endorsement requiring said towage by the said "Umpqua Chief". Defendant has no knowledge or information as to when anyone purporting to represent the plaintiffs first received said endorsement of October 24, 1945, and therefore denies the allegation of the said paragraph X in that respect. Defendant

denies each and every allegation in paragraph X of said reply except as admitted herein.

### XI.

Defendant denies the allegations of paragraph XI of said reply and the whole thereof.

### XII.

Answering paragraph XII of said reply defendant has no knowledge or information sufficient to form a belief as to what knowledge or information the plaintiff had if any concerning the requirement that said towage be done by the "Umpqua Chief" and denies the allegations in said paragraph XII in said respect and puts the plaintiffs to the proof thereof. Defendant denies that the said provision was placed in said endorsement contrary to any [24] previous negotiation or understanding between the defendant and the said Captain Hugh Corgan or anyone purporting to represent the plaintiffs. Defendant denies that the said provision was placed in said endorsement either through error, gross or otherwise, or fraudulently. Defendant denies that the words "in tow of the 'Umpqua Chief' " should be stricken from the said endorsement and denies that the said endorsement should be reformed as claimed by the plaintiffs, or otherwise. Defendant denies each and every allegation of said paragraph XII of said reply except as herein expressly admitted.

For a further, separate and affirmative answer to

the said original complaint, supplemental complaint, and reply and to the whole of said three pleadings, the defendant alleges as follows:

### I.

During the times named herein, the defendant, Universal Insurance Company, was and is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and was and is duly authorized to transact the business of marine insurance within the State of Oregon.

### II.

During the times named herein, J. L. Steinbach and D. E. Steinbach, both residents of Tillamook, within the District of Oregon, were and are partners doing business under the name and style of The Steinbach Iron Works.

### III.

On or about the 6th day of June, 1945, one Hugh Corgan, known in the records of this case as Captain Corgan, purchased at a price of \$5500.00 from the United States Government, the suction dredge "Wishram", her machinery, etc., being the dredge named and described in the pleadings of this case. No part of the said purchase price was furnished by the said Captain Hugh Corgan but the said J. L. Steinbach [25] and D. E. Steinbach supplied alone all of the said purchase price to the said Captain Hugh Corgan and in turn borrowed a portion of

the same from the plaintiff, Frances M. Steinbach, wife of the said J. L. Steinbach and D. E. Steinbach, executed and delivered to the said Francis M. Steinbach, their promisory note which was unsecured.

#### IV.

Upon the purchase of said dredge on or about June 6, 1945, the said Captain Hugh Corgan approached the agents of the defendant insurance company and represented that the plaintiffs herein, Frances M. Steinbach and Carolyn S. Steinbach, were the owners of said dredge and requested the issuance of a marine insurance policy covering the said dredge. Upon said representation the defendant issued its marine insurance policy No. PC-50295, which is the identical insurance policy sued on in this action.

#### V.

On or about July 23, 1945, the said Captain Hugh Corgan and his son, J. H. Corgan, both giving their post office addresses at Tillamook, Oregon, executed and acknowledged and thereafter filed for record in the County of Tillamook and State of Oregon, an assumed business name certificate representing that said parties had an interest in or intended to conduct the business of Coast Dredging & Construction, Ltd., an estate in joint tenancy under the name and style of Coast Dredging & Construction, Ltd.



## VI.

On or about July 23, 1945, the said Captain Hugh Corgan, together with his wife, Constance T. Corgan, executed and acknowledged and thereafter filed for record in the County of Tillamook and State of Oregon, a document whereby the said Hugh Corgan and wife undertook to convey to the said Hugh Corgan and the said J. L. Steinbach and D. E. Steinbach, trustees, certain real property situate in Tillamook County, Oregon, which document stated that the said trustees should conduct a corporate business under the name and style of Coast [26] Dredging & Construction, Ltd., at Tillamook, Oregon. This defendant is informed and believes that the said Captain Hugh Corgan, H. L. Steinbach, D. E. Steinbach and the said J. H. Corgan and no other persons, claim interest in the said business known as Coast Dredging & Construction, Ltd., and that the said business association at all times since July 23, 1945, has been and is in legal effect a partnership.

## VII.

The said Captain Hugh Corgan turned over to the said Coast Dredging & Construction, Ltd., the management and operation of the said dredge "Wishram" and may also have turned over the legal ownership of said dredge to the said partnership, Coast Dredging & Construction, Ltd.

## VIII.

Wherefore defendant alleges that neither of the

plaintiffs was ever at any time an owner or part owner in all or any part of the suction dredge "Wishram" or her machinery, tackle, apparel, furniture or any part of said dredge and the said marine insurance policy which forms the basis of this suit has at said times been and is now void.

### IX.

Upon the issuance of said policy the said Captain Hugh Corgan desired said dredge towed from Coos Bay to Nehalem Bay by the tug "Umpqua Chief" and the defendant believing that said plaintiffs were the owners of said dredge and that the said Captain Hugh Corgan was their agent, consented to said towage and at said time surveyed the tug "Umpqua Chief" and her towing hawser, and also surveyed the said dredge for the said towage.

### X.

During the early part of October, 1945, the said Captain Hugh Corgan desired said dredge towed from Nehalem Bay to Tillamook Bay and represented to the agents of the defendant insurance [27] company that he would have said towage performed by the said tug "Umpqua Chief". The agents of the defendants, still believing that the plaintiffs owned said dredge and that Captain Hugh Corgan was their agent and believing that the said towage would be performed by the said "Umpqua Chief", issued an endorsement covering said towage from Nehalem Bay to Tillamook Bay, which endorsement is cor-



rectly set forth in paragraph V of this answer and by reference is incorporated in this present paragraph. Before issuing said endorsement the defendant's agent surveyed the said dredge as to her general fitness for said towage but made no survey of the tug "Umpqua Chief" or her towing hawser. At the time of the said survey of the said dredge "Wishram", the said dredge was not equipped with any hawser, nor had said dredge ever been equipped with a towing hawser so far as the defendant and its agents know or were informed by the said Captain Hugh Corgan, or anyone in charge of the said dredge.

## XI.

Some two weeks or thereabouts before the said towage was attempted from Nehalem Bay to Tillamook Bay, the said Captain Hugh Corgan on behalf of said dredge, entered into an agreement to make said towage with one Otto Berg, Jr., who was the owner's representative on board and in charge of a certain fish boat known as the "Julia D", whereby the said "Julia D" was to undertake said towage. Thereafter and until the day of the said attempted towage from Nehalem Bay to Tillamook Bay, the said Captain Hugh Corgan knew that said towage was to be attempted by said fish boat but failed to disclose that fact to the defendant, or any of its agents or representatives.

## XII.

In order to assist in said towage and since the fish

boat "Julia D" was not equipped with a towing hawser, the said Captain Hugh Corgan borrowed from some person unknown to this defendant a hawser for the purpose of use in said planned towage from Nehalem Bay to [28] Tillamook Bay. The said hawser was old and badly worn and rotted and was in no sense a sufficient hawser for use in said towage and these facts were at all times known to the said Captain Hugh Corgan or should have been known by him.

### XIII.

The said "Julia D" was not at said time and never was a sufficient vessel for use in towing said dredge from Nehalem Bay to Tillamook Bay, in that the said "Julia D" was not sufficiently powered and was not equipped with proper towing bits or a sufficient crew. Nor was said "Julia D" equipped with any sufficient or strong towing hawser. All of the said facts about the deficiencies of the "Julia D" were at all times known to the said Captain Hugh Corgan, or should have been known by him.

### XIV.

The said Captain Hugh Corgan having previously represented that the tug "Umpqua Chief" would effect the said towage from Nehalem Bay to Tillamook Bay, never informed the defendant or any of its agents or representatives, that he would attempt to have said towage made by the fish boat "Julia D" and failed to disclose to the defendant or its agents that the said towage would be made by the said "Julia D" and that he had borrowed an old worn

out hawser for the purpose of making said towage. If these facts had been known by or noticed to the defendant or any of its agents prior to the time of the issuance of said endorsement of October 24, 1945, the defendant would have refused to issue said endorsement and would have refused to insure said dredge on the proposed towage from Nehalem Bay to Tillamook Bay by the said "Julia D" with said defective hawser.

### XV.

The defendant and its agents believing in the truth of the representations by Captain Hugh Corgan that the said towage from Nehalem Bay to Tillamook Bay would be conducted by the tug "Umpqua Chief", issued its said endorsement of October 24, 1945, naming said [29] "Umpqua Chief" as the towing tug and reinsured its risk on said towage with various other marine insurance companies. If the plaintiffs were permitted a recovery in this case on said policy notwithstanding that said towage was attempted by said "Julia D", the defendant will be unable to recover from its said reinsuring companies any part or portion of said loss.

### XVI.

At the time of said attempted towage of the dredge "Wishram" from Nehalem Bay to Tillamook Bay, the said dredge "Wishram" was equipped with said borrowed hawser and the said hawser was insufficient for the purposes of said tow-

age and the said fact was fully known or should have been known to the said Captain Hugh Corgan. Consequently the said dredge was then and there unseaworthy and said unseaworthiness was within the knowledge or privity of the owner or owners of said dredge.

Wherefore defendant prays that the said marine insurance policy and the endorsement thereof of October 24, 1945, be held void and cancelled and that the plaintiffs take nothing by their complaint and supplemental complaint and reply herein and that the defendant have and recover of and from the plaintiffs its costs and disbursements and that the defendant have such other further relief as may be just and equitable in the premises.

MacCORMAC SNOW,  
Attorney for Defendant.

Service of the within amended answer is admitted this 8th day of July, 1946.

/s/ W. K. PHILLIPS,  
Of Attorneys for Plaintiffs.

[Endorsed]: Filed July 8, 1946. [30]

In the District Court of the United States  
For the District of Oregon  
No. Civil 3087

FRANCES M. STEINBACH and  
CAROLYN S. STEINBACH,  
Plaintiffs,

vs.

UNIVERSAL INSURANCE COMPANY,  
a corporation,  
Defendant,

UNIVERSAL INSURANCE COMPANY,  
a corporation,  
Third Party Plaintiff,

OTTO BERG and OTTO BERG, Jr.,  
Third Party Defendants.

### PETITION TO BRING IN THIRD PARTY

Comes the Universal Insurance Company, defendant and third party plaintiff above named, and respectfully petitions the above entitled Honorable Court and thereupon shows as follows:

#### I.

This petitioner herewith lodges with the clerk of the above entitled court his third party complaint which he desires to file against the third party defendants above named, and by this reference incorporates in this petition each and all of the allegations of the said third party complaint and thereby makes said allegations and each of them a part of this petition.

## II.

In and by said third party complaint, your petitioner exhibits a state of facts under which Otto Berg and Otto Berg Jr., above named third party defendants, who are not yet parties to this action, are or may be liable to your petitioner or to the plaintiffs herein, and either of them. for the amount of the plaintiffs' claim against [31] your petitioner.

Wherefore your petitioner respectfully prays as follows:

(1) That your petitioner be permitted to file herein its said third party complaint;

(2) That process may issue by the clerk under said third party complaint against Otto Berg and Otto Berg Jr., third party defendants above named, requiring them to appear herein within the time required by the rules of this court, then and there to answer the exigencies of the complaint and reply herein and of the third party complaint herein;

(3) That upon a hearing of this cause if the court shall adjudge your petitioner to be liable to the plaintiffs and either of them for any or all of the amount named in the complaint herein, then and in that event that your petitioner may have judgment over against the third party defendants, and each and either of them, for such amount or amounts as your petitioner may be adjudicated liable to the plaintiffs or either of them;

(4) That your petitioner may have such other



and further relief in the premises as may be just and equitable.

MacCORMAC SNOW,  
Attorney for Universal Insurance Company,  
Petitioner, also Defendant and Third Party  
Plaintiff.

To the Plaintiffs and to Wendell K. Phillips and  
George P. Winslow, their attorneys.

Please be notified that the defendant will bring  
the within petition on for hearing Monday, July 22,  
1946, at 10:00 a.m., or as soon thereafter as counsel  
can be heard.

MacCORMAC SNOW,  
Attorney for Defendant.

Service of the within petition is admitted this  
8th day of July, 1946.

/s/ W. K. PHILLIPS,  
Of Attorneys for Plaintiffs.

[Endorsed]: Filed July 8, 1946. [32]

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[Title of District Court and Cause.]

### ORDER

This cause coming on to be heard on the petition  
of the defendant for leave to file its Third Party  
Complaint against the third party defendants, the  
plaintiffs appearing by their attorney and consent-  
ing thereto, and it further appearing that the de-



fendant has lodged with the clerk of this court its proposed Third Party Complaint against the third party defendants, from which complain and the said petition it appears that the third party defendants and each or either of them may be liable to the plaintiffs herein or to the defendant for the damage and loss alleged in the complaint herein.

Now therefore, it is considered and ordered that the defendant shall be and is hereby granted leave to file the said Third Party Complaint and the clerk of this court shall be and is directed to issue summons thereon.

Dated July 8, 1946.

/s/ JAMES ALGER FEE,  
Judge.

[Endorsed]: Filed July 8, 1946. [33]

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[Title of District Court and Cause.]

### APPLICATION TO REOPEN

Comes the defendant and respectfully requests the Court to reopen this case for the purpose of receiving expert testimony as to the sufficiency of the hawser, a piece of which is in evidence herein for the purpose of the towage involved herein.

The ground of this application is as follows:

Defendant believes that virtually any well-informed marine surveyor or tugboat operator ac-

quainted with the weather, waters and harbors of the Oregon coast would consider this hawser insufficient for the purposes of the towage in question.

Defendant attaches hereto the affidavits of Orth Mathiot and K. A. Webb.

The evidence is undisputed as to these facts:

Hugh Corgan proposed to Otto Berg, Jr., that the latter tow the dredge. They agreed on the towage and the price therefor subject to the securing of a hawser by Corgan. Corgan said he would undertake to get a hawser. Through Ole Johnson, Corgan got "permission" to enter the Coast Guard boat house. J. H. Corgan and dredge engineer, Orville Boster went in the boat house and upstairs to the loft, and there selected the hawser in question among several. They then drove to the home of Otto Berg, Jr. and told him about the hawser. Berg drove to his moorage and moved the *Julia D* alongside the boat house. J. H. Corgan and Boster returned to the loft and payed the hawser out of the window and down to the deck of the *Julia D*, where Berg received and coiled it.

The fact that Berg could have refused to use this hawser does not negative the fact that the dredge employees selected and delivered it on board the *Julia D* for the express purpose of use in the contemplated towage. Thus it is undisputed that the Wishram voluntarily furnished the hawser.

If the defendant can satisfy the Court that the hawser was insufficient for this towage, it follows that the dredge was unseaworthy at the commence-

ment of the voyage, within the privity of its owners and operators.

/s/ MacCORMAC SNOW,  
Attorney for Defendant.

Service of the within application is admitted this 23rd day of June 1947.

/s/ W. K. PHILLIPS,  
Of Attorneys for Plaintiffs.

/s/ B. G. SQULASON,  
Of Attorneys for Third Party  
Defendants. [36]

*Affidavit*

United States of America,  
District of Oregon—ss.

I, Orth Mathiot, being first duly sworn depose and say that I am experienced in towage on the Oregon coast and with the harbors thereof; that I have examined a piece of hawser in evidence in the case involving the loss of the dredge Wishram, and am of the opinion that the said hawser was insufficient for the towage of said dredge from Nehalem Bay to Tillamook Bay on November first of any average year; that I will so testify if examined as a witness in said case.

ORTH MATHIOT.

Subscribed and sworn to before me this 23rd day of June, 1947.

[Seal] MacCORMAC SNOW,  
Notary Public for Oregon.  
My commission expires September 27, 1948.

Affidavit

United States of America,  
District of Oregon—ss.

I, K. A. Webb, being first duly sworn, depose and say that I am a marine surveyor for the Board of Marine Underwriters; that I have examined the piece of the hawser in evidence in the suit involving the loss of the dredge Wishram and am of the opinion that the said hawser was insufficient for the towage of the dredge from Nehalem Bay to Tillamook Bay on November first of an average year; that I will so testify if placed on the witness stand.

K. A. WEBB.

Subscribed and sworn to before me this 23rd day of June, 1947.

[Seal]                      MacCORMAC SNOW,  
Notary Public for Oregon.  
My commission expires September 27, 1948.

[Endorsed]: Filed June 23, 1947. [38]

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[Title of District Court and Cause.]

ORDER DENYING APPLICATION  
TO REOPEN

This cause came on to be heard at 11:00 o'clock a.m., June 23, 1947, prior to the entry of findings of fact and conclusions of law and the judgment herein on the application of the defendant to reopen

this case for the purpose of receiving expert testimony as to the sufficiency of the hawser, a piece of which is in evidence herein for the purpose of the towage involved herein; the plaintiffs appearing by W. K. Phillips, one of their attorneys, the defendant appearing by MacCormac Snow, his attorney, and the third party defendant appearing by B. G. Skulason, their attorney; and the Court having heard the parties in respect to said application,

Now, therefore the said application is denied upon the grounds stated by the court at the above described time.

June 23, 1947.

CLAUDE McCOLLOCH,  
Judge.

Docketed June 24, 1947.

[Endorsed]: Filed June 24, 1947.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled cause having come on regularly on the 17th and 18th days of June, 1947, for trial of all issues other than those reserved for further trial and decision, as hereinafter stated, before the Honorable Claude McCulloch, judge of the above entitled court in Portland, Oregon, sitting without

a jury, the parties having respectively waived the right to insist upon jury trial; the plaintiffs appearing in person and by and through their attorneys, Geo. P. Winslow and W. K. Phillips, and defendant appearing by its representatives and by MacCormac Snow, its attorney, and the third party defendants appearing in person and by B. G. Skulason, their attorney; and the Court having separated the claims and cause for trial, and having advised counsel for the [39] respective parties that the issues between the plaintiffs and the defendant Universal Insurance Company, a corporation, would be tried separately at that time without trial of the issues between Universal Insurance Company, a corporation, as third party plaintiff, and Otto Berg and Otto Berg, Jr., third party defendants, and all parties being advised as to what issues were to be tried, opening statements were made by respective counsel, after which testimony was introduced on behalf of the plaintiffs, followed by testimony on behalf of the defendant, and finally concluded by rebuttal testimony on behalf of the plaintiffs, and respective counsel for the plaintiffs and the defendant, Universal Insurance Company, having made oral argument of the cause to the Court, and at the outgoing of the Court on Wednesday, the 18th day of June, 1947, the Court took the said cause under advisement, and the Court, having given full and due consideration to the said cause and now being duly advised, does now make the following



caused by sinking and other perils, for a period beginning the 6th day of June, 1945, and ending the 6th day of June, 1946, and that the said policy at all times herein mentioned was in full force and effect.

#### IV.

That on or about the 24th day of October, 1945, the said policy of insurance was amended, wherein and whereby the defendant, for an agreed additional premium of the sum of \$1250.00, \$1062.50 thereof to be returned on safe arrival with no claim, did insure and extend the said policy to cover one trip and voyage from Nehalem Bay to Tillamook Bay for the full sum of \$12,500.00, which was the reasonable value of the said suction dredge "Wishram."

#### V.

That the defendant did receive a check from the said plaintiffs in the sum of \$187.50, which it cashed and retained the funds received therefrom until on or about the 30th day of November, 1945, when it attempted to return the same to the plaintiffs, which return was refused, and that thereafter, on the 21st day of May, 1946, the defendant did pay the said \$187.50 and deposit the same in the registry of this court. [41]

#### VI.

That on or about the 17th day of October, 1945, the said suction dredge "Wishram" was surveyed by a representative of the defendant and declared to be seaworthy.



VII.

That on or about the 1st day of November, 1945, the said suction dredge "Wishram" was wrecked and became a total loss in Tillamook Bay, Oregon.

VIII.

That the said suction dredge "Wishram" was seaworthy at the commencement of the said voyage.

IX.

That it has not been established that the plaintiffs or their agents failed to disclose any material facts to the defendant, in violation of the terms of the said insurance policy, or that in obtaining the said extension and amendment of the said policy permitting the said voyage from Nehalem Bay to Tillamook Bay, the plaintiffs or their agents made any false representations or violated any warranties to this defendant.

X.

That the plaintiffs did on or about the 5th day of November, 1945, fully and completely notify the defendant of the said loss, and give to the defendant complete information concerning the loss of the suction dredge "Wishram."

XI.

That thereafter, and on or about the 30th day of November, 1945, the defendant did, by letter, deny liability to the plaintiffs on the said policy, on the

ground that the said [42] tow of the said suction dredge "Wishram" from Nehalem Bay to Tillamook Bay was not made by the tug "Umpqua Chief," and refused and ever since said time has refused to pay to these plaintiffs the sum of \$11,437.50 or any other amount.

## XII.

That at all times herein mentioned said policy of insurance made and executed by this defendant to these plaintiffs was in full force and effect and enforceable, and that the terms thereof have not been violated by the plaintiffs.

## XIII.

That the amount in controversy between the plaintiffs and the defendant, due under the said insurance policy, is the sum of \$11,437.50, together with interest thereon at the rate of six per cent per annum from the 30th day of November, 1945.

## XIV.

That a reasonable attorney fee to be allowed by this Court to the plaintiffs, as attorneys' fees in this action, is the sum of \$1500.00.

## XV.

That the defendant is the owner of the said \$187.50 deposited by it in the registry of this court.

XVI.

That the issues between the third party plaintiff, Universal Insurance Company, a corporation, and the third party defendants, Otto Berg and Otto Berg, Jr., were not presented to this Court for determination and are subject to further proceedings.

Now, therefore, based on the foregoing Findings of [43] Fact, the Court now draws the following

Conclusions of Law

That the defendant is and has been indebted to these plaintiffs in the full sum of \$11,437.50, together with interest thereon at the rate of six per cent per annum from the 30th day of November, 1945, until paid.

II.

That the plaintiffs are entitled to recover off of and from the defendant, Universal Insurance Company, a corporation, the full sum of \$11,437.50, together with interest thereon at the rate of six per cent per annum from the 30th day of November, 1945, until paid, and their costs and disbursements herein incurred.

III.

That the plaintiffs are entitled to recover off of and from the defendant, Universal Insurance Company, a corporation, attorneys' fees in the sum of \$1500.00.

That the plaintiffs are entitled to judgment against the defendant, and judgment shall forthwith and immediately be entered in favor of the plaintiffs and against the defendant in the full sum of \$11,437.50, together with interest thereon at the rate of six per cent per annum from the 30th day of November, 1945, until paid, and for the additional sum of \$1500.00, attorneys' fees, together with plaintiff's costs and disbursements herein incurred.

Dated this 23rd day of June, 1947.

/s/ CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed June 23, 1947. [44]

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State of Oregon,  
County of Multnomah—ss.

Due service of the foregoing Findings of Fact and Conclusions of Law by copy as prescribed by law is hereby admitted, at Portland, Oregon, this 20th day of June, 1947.

MacCORMAC SNOW,  
By FEN

Attorney for Defendant. [45]

In the District Court of the United States  
For the District of Oregon

Civil No. 3087

FRANCIS M. STEINBACH and  
CAROLYN S. STEINBACH,  
Plaintiffs,

vs.

UNIVERSAL INSURANCE COMPANY,  
a corporation,  
Defendant,

UNIVERSAL INSURANCE COMPANY,  
a corporation,  
Third Party Plaintiff,

OTTO BERG and OTTO BERG, Jr.,  
Third Party Defendants.

### JUDGMENT

The above-entitled cause having come on regularly on the 17th and 18th days of June, 1947, for trial before the Honorable Claude McColloch, judge of the above-entitled court in Portland, Oregon, sitting without a jury, the parties having respectively waived the right to insist upon jury trial; the plaintiffs appearing in person and by and through their attorneys, Geo. P. Winslow and W. K. Phillips, and defendant appearing by its representatives and by MacCormac Snow, its attorney, and the third party defendants appearing in person and by B. G.

Skulason, their attorney; and the Court having separated the claims and causes for trial, and having advised counsel for the respective parties that the issues between the plaintiffs and the defendant Universal Insurance Company, a [46] corporation, would be tried separately at that time without trial of the issues between Universal Insurance Company, a corporation, as third party plaintiff, and Otto Berg and Otto Berg, Jr., third party defendants, and all parties being advised as to what issues were to be tried; the Court having heard the evidence and considered the exhibits, having listened to argument of the respective attorneys and having taken the same under advisement, and having heretofore made and filed its Findings of Fact and Conclusions of Law wherein the Court finds and concludes that plaintiffs are entitled to recover judgment off of and from the defendant, Universal Insurance Company, a corporation, in the full sum of \$11,437.50, together with interest thereon at the rate of six per cent per annum from the 30th day of November, 1945, until paid, and for the additional sum of \$1500.00 attorneys' fees, together with plaintiffs' costs and disbursements herein incurred;

Now, therefore, it is ordered and adjudged that the plaintiffs, Francis M. Steinbach and Carolyn S. Steinbach, have and recover off of and from the defendant, Universal Insurance Company, a corporation, the full sum of \$11,437.50, together with interest thereon at the rate of six per cent per annum from the 30th day of November, 1945. until

paid, and the further sum of \$1500.00, attorneys' fees, together with their costs and disbursements herein incurred taxed at \$117.40.

Dated this 23rd day of June, 1947.

/s/ CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed June 23, 1947. [47]

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Comes Universal Insurance Company, defendant above named and gives this notice that the said defendant appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain final judgment entered in and by the above-entitled court in the above-entitled cause on the 23rd day of June 1947 in favor of the plaintiffs above named and against this appealing defendant and from the whole of said judgment.

/s/ MacCORMAC SNOW,  
Attorney for Universal Insurance  
Company, Defendant-Appellant.

[Endorsed]: Filed August 12, 1947. [48]



[Title of District Court and Cause.]

### SUPERSEDEAS BOND

Be it remembered that we, Universal Insurance Company, Defendant and Appellant above named, and Glens Fall Indemnity Company, a New York Corporation, are held and firmly bound unto whom it may concern in the full penal sum of Fifteen Thousand Dollars (\$15,000) for the payment of which well and truly to be made we and each of us do hereby bind ourselves and our successors and assigns, jointly and severally, firmly by these presents.

Dated this 15th day of August 1947.

The condition of this obligation is such that if the said Universal Insurance Company, Appellant, shall satisfy in full that certain judgment executed June 23, 1947 together with costs, interests, and damages for delay if for any reason the appeal taken herein by said Appellant is dismissed or if the judgment appealed from is affirmed and shall satisfy in full such modifications of the said judgment and such costs, interest, and damages as the Appellate Court may adjudge and [49] award, then this obligation shall be null and void otherwise to be and remain in full force and effect.

In witness whereof we have caused these presents to be duly executed the day and year above set forth.

UNIVERSAL INSURANCE  
COMPANY,

Jewett Barton Leavy and Kern,

By /s/ ADDISON KNAPP,

Its Agent.

[Seal]

GLENS FALLS INDEMNITY  
COMPANY,

By /s/ J. STUART LEAVY.

Countersigned:

JEWETT, BARTON, LEAVY  
and KERN,

By /s/ J. STUART LEAVY,

Resident Agents.

Service of the within Supersedeas Bond is admitted this 2nd day of Sept. 1947 and exceptions are hereby waived to the amount of the bond and the surety.

/s/ W. K. PHILLIPS,

Of Attorneys for Plaintiffs-  
Respondents.

/s/ G. G. SKULASON,

Attorney for Third Party  
Defendants-Respondents.

Approved Sept. 8, 1947.

/s/ CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed September 8, 1947. [50]

[Title of District Court and Cause.]

### STATEMENT OF POINTS

Comes the appellant and files this statement of the point on which he intends to rely on this appeal.

The District Court erred:

1. In admitting parol evidence as tending to show transfer of the dredge.

2. In finding as a fact that the plaintiffs are proper parties to insure the dredge.

3. In failing to hold that plaintiffs were never the owners of the dredge.

4. In failing to hold that the plaintiffs had no insurable interest in the dredge.

5. In failing to hold the policy sued on void for want of insurable interest in the plaintiffs.

6. In failing to hold the plaintiffs failed to prove the allegation of their complaint that plaintiffs were the owners of the dredge.

7. In entering findings of fact and conclusions of law and judgment at variance with the complaint in that plaintiffs allege that they owned the dredge and the trial courts decision is that plaintiffs are proper parties to sue on the policy. [51]

8. In allowing a recovery by plaintiffs upon a showing that they were not the real parties in interest in the recovery.

9. In failing to hold that the dredge was unseaworthy at the commencement of the voyage in that the dredge was equipped with an insufficient towing hawser.

10. In failing to deny recovery to the plaintiffs on account of breach of an implied warranty of the policy insurance that the dredge should be seaworthy at the commencement of the voyage.

11. In holding that the insufficiency of the hawser with which the towage was attempted was not chargeable to the operators of the dredge.

/s/ MacCORMAC SNOW,  
Attorney for Appellant.

Service of the within Statement of Points is admitted this 2nd day of Sept., 1947.

/s/ W. K. PHILLIPS,  
Attorney for Plaintiffs-  
Respondents.

/s/ B. G. SKULASON,  
Attorney for Third Party  
Defendants-Respondents.

[Endorsed]: Filed September 8, 1947. [52]

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[Title of District Court and Cause.]

### STIPULATION WITH REFERENCE TO EXHIBITS

It is hereby stipulated that a pre-trial conference was held at which a number of exhibits were identified and given pre-trial numbers; that no pre-trial order was entered and the case was thereafter tried on the pleadings; that in the course of the trial all

pre-trial exhibits were offered and received in evidence, identified by their respective pre-trial numbers, including all exhibits to depositions.

Defendant does not waive its objection and exception to the admission of parol testimony tending to prove any transfer of the dredge "Wishram."

Third party defendants do not hereby waive any objections they may have to the introduction in evidence of any or all of said exhibits.

/s/ GEO. P. WINSLOW,  
/s/ W. K. PHILLIPS,  
Attorneys for Plaintiffs.

/s/ MacCORMAC SNOW,  
Attorney for Defendant.

/s/ B. G. SKULASON,  
Attorney for Third Party  
Defendants.

[Endorsed]: Filed September 8, 1947. [53]

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[Title of District Court and Cause.]

### DESIGNATION

Comes the appellant and designates the portions of the record, proceedings and evidence in the District Court to be contained in the record on appeal, as follows:

1. Complaint
2. Supplemental complaint

3. Reply
4. Amended answer
5. Petition to bring in third parties
6. Order granting leave to file third party complaint
7. Application to reopen.
8. Findings of fact and conclusions of law
9. Judgment
10. Transcript of proceedings June 17, 18, 23, 1947
11. Pre-trial Exhibit 7, Tillamook depositions and exhibits
12. Pre-trial Exhibit 13, Letter—Steinbach to Corgan
13. Pre-trial Exhibit 14, assumed name, Steinbachs
14. Pre-trial Exhibit 15, Conveyance and Trust
15. Pre-trial Exhibit 20, Piece of Hawser [55]
16. Pre-trial Exhibit 21, Letter—War Department to Corgan
17. Pre-trial Exhibit 22, Letter—War Department to Corgan
18. Pre-trial Exhibit 23, Policy
19. Pre-trial Exhibit 24, A, B and C Indorsements
20. Notice of Appeal
21. Supersedeas Bond
22. Statement of Points on Appeal
23. This Designation
24. Stipulation in re Exhibits

- 25. Stipulation in re insurance policy
- 26. All blotter entries

/s/ MacCORMAC SNOW,  
Attorney for Appellant.

Service of the foregoing Designation is hereby  
accepted this 2nd day of Sept. 1947.

/s/ W. K. PHILLIPS,  
Attorney for Respondents, Francis M. Steinbach  
and Carolyn S. Steinbach.

/s/ B. G. SKULASON,  
Attorney for Third Party  
Defendants & Respondents.

[Endorsed]: Filed Sept. 8, 1947. [56]

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[Title of District Court and Cause.]

### STIPULATION WITH REFERENCE TO THE POLICY

It is stipulated with respect to the policy of insurance forming the subject of this action (Exhibit 23) that the dredge "Wishram" was lost by reason of one or more of the marine perils named in the policy and that the only portions of the policy material to the issues raised by the appeal of this cause, other than those quoted in the pleadings, are as follows:

"Universal Insurance Company, New Jersey, A Stock Company. Talbot, Bird & Company, Inc., General Managers, 114 Sansome Street, San Francisco, California, by this policy of insurance does insure Francis M. Steinbach and Carolyn S. Stein-



bach for account of themselves, loss, if any, payable in funds current in the United States to assures, or order. [59]

In consideration of the said person or persons effecting this policy promising to pay to the said company the sum of three hundred seventy-five and no/100 dollars as a premium at and after the rate of 3 per cent for such Insurance the said Company takes upon itself the burden of such Insurance to the amount of twelve thousand five hundred and no/100 dollars and promises and agrees with the Insured, there Executors and Administrators in all respects truly to perform and fulfill the Contract contained in this Policy. And it is hereby agreed and declared that the said Insurance shall be and is an Insurance upon hull, machinery, etc., of and in the good Suction Dredge called the "Wishram" or by whatsoever other name or names the said vessel is or shall be named or called, lost or not lost, at and from the 6th day of June 1945 until the 6th day of June 19      beginning and ending with noon, Pacific Standard Time.

The said vessel, etc., for so much as concerns the Insured, by agreement between the Insured and the said Company in this Policy, are and shall be valued at as follows:

Hull, tackle, apparel, furniture, etc.....	\$.....
Machinery, boilers, etc., and everything	
connected therewith .....	\$.....

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\$12,500.00

Twelve thousand five hundred and no/100 dollars

subject to the terms and conditions of this form and clauses hereto attached."

American Hulls (Pacific)

1944

To be attached to and form a part of Policy No. PC50295 of the Universal Insurance Company, dated June 6, [60] 1945, Francis M. Steinbach and Carolyn S. Steinbach for account of themselves but subject to the provisions of this policy with respect to change of ownership.

Should the vessel be sold or transferred to other ownership or chartered on a bareboat basis or requisitioned on that basis, then, unless the Underwriters agree thereto in writing, this Policy shall thereupon become cancelled from date of such sale, transfer, charter or requisition; provided, however, that in the case of an involuntary transfer by requisition or otherwise, without the prior execution of any written agreement by the Assured, such cancellation shall take place fifteen days after such transfer; and provided further that if the vessel has cargo on board and has already sailed from her loading port, or is at sea in ballast, such cancellation shall be suspended until arrival at final port of discharge if with cargo or at port of destination if in ballast. This insurance shall not inure to the benefit of any such charterer or transferee of the vessel, and if a loss payable hereunder should occur during such period of fifteen days the Underwriters shall be subrogated to all the rights of the Assured against the transferee, by reason of such transfer,

in respect to all or part of such loss as is recoverable from the transferee and in the proportion which the respective amounts insured bear to the insured value. A pro rata daily return of net premium shall be made. The foregoing provisions with respect to cancellation in the event of sale, transfer, charter or requisition shall apply even in the case of insurance "for account of [61] whom it may concern."

Loss, if any, payable to assureds or order. In the sum of twelve thousand five hundred and no/100 dollars, at and from the 6th day of June 1945 beginning and ending with noon to the 6th day of June 1946 Pacific Standard Time.

Provided, however, should the vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

On the Suction Dredge called the "Wishram" (or by whatsoever name or names the said vessel is or shall be called.)

The said vessel, for so much as concerns the Assured, by agreement between the Assured and Underwriters in this Policy, is and shall be valued at as follows:

Hull, tackle, apparel, passenger fittings, equipment, stores, ordnance, munitions, boats and other furniture.....\$.....	
Boilers, machinery, refrigerating machinery and insulation, and everything connected therewith.....\$12,500.00	

Donkey boilers, winches, cranes, windlasses, steering gear and electric light apparatus shall be deemed to be a part of the hull and not of the machinery.

The Underwriters to be paid in consideration of this insurance three hundred seventy-five and no/100 dollars being at the rate of 3 per cent.

### Special Conditions and Warranties

Warranted laid up and out of commission in Coos Bay, Oregon. [62]

For and in consideration of an additional premium of \$1250.00, the within policy is hereby extended to cover the insured dredge at and from Coos Bay to Nehalem Bay, it being understood and agreed that the underwriters will refund \$1062.50 of this additional premium if and when dredge arrives safely at Nehalem Bay.

After arrival at Nehalem Bay this policy shall cover the insured dredge while laid up or while operating at rate to be arranged.

“The terms and conditions of this form are to be regarded as substituted for those of policy form to which it is attached, the latter being waived, except provisions required by law to be inserted in the Policy.”

This stipulation may be printed in the transcript in lieu of said policy.

/s/ GEO. P. WINSLOW,  
/s/ W. K. PHILLIPS,  
Of Attorneys for Plaintiffs.

/s/ MacCORMAC SNOW,  
Attorney for Defendant.

/s/ B. G. SKULASON,  
Attorney for Third Party  
Defendants.

Filed October 9, 1947. [63]

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## DOCKET ENTRIES

1946

Mar. 30—Filed complaint.

Mar. 30—Issued summons—to marshal.

Apr. 3—Filed summons with return.

Apr. 17—Filed motion of deft. for summary judgment.

Apr. 23—Filed motion of ptff. for extension of time to file counter affidavits and continuing hearing on motion for summary judgment.

Apr. 23—Filed affidavit of W. K. Phillips.

Apr. 23—Filed and entered order allowing ptff. to May 4 to file counter-affidavits and continuing hearing on motion of deft. for summary judgment to May 13, 1946. Fee

1946

May 6—Filed affidavit.

May 13—Filed and entered order denying motion for summary judgment and allowing deft. to May 23, 1946 to plead. Fee

May 21—Issued subpoena and one copy to MacCormac Snow.

May 21—Filed answer.

May 28—Filed subpoena.

June 8—Filed motion of deft. for issuance of subpoenas duces tecum.

June 10—Filed and entered order for issuance of subpoenas duces tecum. McC.

June 10—Filed reply and demand for jury.

June 11—Filed notice of taking deposition.

June 11—Issued 2 subpoenas duces tecum to MacCormac Snow.

June 12—Filed motion for issuance of subpoena duces tecum to Capt. Hugh Corgan.

June 12—Filed and entered order for issuance of subpoena duces tecum to Capt. Hugh Corgan. McC.

June 12—Issued subpoena duces tecum to MacCormac Snow.

June 24—Entered order allowing ptff. 2 weeks to file amended complaint and deft. 10 days thereafter to plead. Fee

June 29—Filed supplemental complaint.

July 8—Filed amended answer of deft. to original complaint, and supp. complaint.

July 8—Filed petition of defendant to bring in third party.



1946

- July 8—Filed and entered order granting leave to deft. as third party plaintiff to file complaint and for process. Fee
- July 8—Filed third party complaint.
- July 9—Issued third party summons to marshal.
- July 10—Filed deposition of Hugh Corgan in behalf of deft.
- July 23—Filed summons, with marshal's return.
- Aug. 1—Filed separate answer of third party deft. Otto Berg, Jr.
- Aug. 1—Filed separate answer of Otto Berg.
- Sept. 21—Entered order setting for trial on Oct. 2, 1946. McC
- Sept. 25—Filed Notice of Deft. and Third Party Ptff. take deposition of J. H. Corgan.
- Sept. 24—Entered order striking trial date. Attorneys notified McC. [65]
- Oct. 10—Filed notice of taking deposition of George N. Williams.
- Oct. 14—Filed amended answer to Otto Berg, Jr., Third Party defendant.
- Oct. 14—Filed motion of Otto Berg re deposition of Geo. N. Williams only on written interrogatories.
- Oct. 14—Entered order setting hearing on motion for interrogatories for Oct. 15, 1946—10 a.m. McC.



1946

- Oct. 18—Entered record of hearing on motion for interrogatories—order taking under advisement. McC.
- Oct. 30—Filed deposition of George N. Williams.
- Nov. 8—Filed deposition of Otto Berg.
- Nov. 12—Entered order setting for pre-trial on Jan. 6, 1947. McC.
- Dec. 16—Filed Notice, deposition Herbert P. Lederer.
- Dec. 17—Filed Amended Notice Deposition Herbert P. Lederer.
- Dec. 31—Filed and entered Order for subpoena duces tecum to Col. O. E. Walsh. McC.
- Dec. 31—Issued subpoena duces tecum — to marshal.
- Dec. 31—Filed application for subpoena duces tecum to Col. O. E. Walsh.

1947

- Jan. 2—Filed deft's. notice to produce.
- Jan. 2—Filed application for subpoena duces tecum.
- Jan. 2—Filed and entered order for subpoena duces tecum. McC.
- Jan. 2—Issued subpoena duces tecum and 3 copies to MacCormac Snow.
- Jan. 6—Record of pre-trial hearing. Holcomb Rep. McC.
- Jan. 3—Filed subpoena duces tecum.
- Jan. 15—Filed Transcript of Proceedings Jan. 6, 1947. on 2/24/47.

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- Feb. 19—Filed notice of taking deposition of Col. O. E. Walsh. McC.
- Feb. 19—Filed application for subpoena duces tecum.
- Feb. 19—Filed and entered order for issuance of subpoena duces tecum to Col. O. E. Walsh. McC.
- Feb. 19—Issued subpoena duces tecum—to F. Wagner.
- Apr. 2—Entered order setting for trial on June 3, 1947. Notified McC.
- Apr. 8—Entered order relating to exhibit 34(a). McC.
- Apr. 8—Filed notice, deposition of Rex Davenport.
- May 15—Entered order resetting for trial on June 17, 1947. Notified McC.
- June 2—Filed deft's. motion to postpone trial.
- June 2—Filed deft's. affidavit in support of above motion.
- June 2—Entered order setting for pre-trial conference on June 9, 1947. Notices. McC.
- June 9—Record of pre-trial conference and order denying motion of Third party deft. for continuance of trial date and that trial date stand subject to later arrangements. McC.
- June 11—Issued civil subpoena and 4 copies to MacCormac Snow.
- June 17—Entered record of trial before court. McC

1947

- June 18—Entered record of trial before court and order to submit authorities. McC.
- June 23—Filed application to reopen case for further testimony and evidence.
- June 23—Entered order denying motion to reopen case. McC.
- June 24—Filed above order.
- June 23—Filed and entered Findings of Fact and Conclusions of Law. McC.
- June 23—Filed and entered Judgment for ptff. for \$11,437.50 with int. at 6% from Nov. 30, 1945 and for \$1500.00 atty. fees notices. McC.
- June 26—Entered Judgment in Lien Docket.
- Aug. 12—Filed notice of appeal by Universal Insurance Co. Snow.
- Aug. 12—Copies of notice of appeal to Atty. Winslow, Tillamook, and Atty. Phillips, Pub. Ser. Bldg., Portland.
- Sept. 8—Filed statement of points.
- Sept. 8—Filed stipulation re exhibits.
- Sept. 8—Filed designation of record.
- Sept. 8—Filed supersedeas bond. [66]

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### CERTIFICATE OF CLERK

United States of America,  
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered

from 1 to 67 inclusive, constitute the transcript of record upon the appeal from a judgment of said Court in a cause therein numbered Civil 3087, in which Universal Insurance Company, a corporation is defendant and appellant and Francis M. Steinbach and Carolyn S. Steinbach are plaintiffs and appellees; that said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellant and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said Court in said cause, in accordance with the said designation, as the same appears of record and on file at my office and in my custody.

I further certify that I have enclosed a duplicate transcript of proceedings dated June 17, 18 and 23, 1947 and original exhibits 7, 13, 14, 15, 20, 21, 22, 23, 24 A, B, and C, 25, 26 A, B, and C, 27 A and B, 28, 29, 30, 31, 32, 33, 34 A and B, 35, 37, and 39. Exhibit 20 is being sent under separate cover.

I further certify that the cost of comparing and certifying the within transcript is \$47.90 and that the same has been paid by appellant.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 15th day of October, 1947.

[Seal]                      LOWELL MUNDORFF,

Clerk.

By /s/ E. NOWELL,

Deputy. [67]

In the District Court of the United States  
For the District of Oregon

Civil No. 3087

FRANCIS M. STEINBACH and CAROLYN S.  
STEINBACH,

Plaintiffs,

vs.

UNIVERSAL INSURANCE COMPANY, a cor-  
poration,

Defendant.

UNIVERSAL INSURANCE COMPANY, a cor-  
poration,

Third-Party Plaintiff,

vs.

OTTO BERG and OTTO BERG, Jr.,

Third-Party Defendants.

Portland, Oregon, June 17, 1947

Before: Honorable Claude McColloch, Judge.

Appearances:

Mr. George P. Winslow and Mr. Wendell K.  
Phillips, Attorneys for Plaintiffs;

Mr. MacCormac Snow, Attorney for Defendant  
and Third-Party Plaintiff;

Mr. Bardi G. Skulason, Attorney for Third-Party  
Defendants. [1\*]

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\* Page numbering appearing at top of page of Reporter's certified  
Transcript of Record.

## PROCEEDINGS OF TRIAL

(Opening statements were then made by respective counsel.)

Mr. Phillips: I might suggest, your Honor, that there has been a pre-trial and all the exhibits, I believe, are already in. I suggest that we offer them at one time and that either party may use them as they see fit, if there is no objection.

Mr. Snow: No objection. Your Honor, there is one exhibit I did not have at that time. I neglected to reserve a number for it. I ask the Court at this time to have it marked as a pre-trial exhibit and admitted with the other exhibits. I refer to the bill of sale by Otto Berg to C. F. Youngblood regarding the Gas Screw Vessel *Julia D.*

Mr. Phillips: We have no objection to that.

Mr. Snow: A certified copy.

Mr. Skulason: In that connection, your Honor, if you are going to use the pre-trial procedure and if all the exhibits should be in, I would like to have introduced as a part of the pre-trial procedure certain checks covering, in part, the purchase price of the *Julia D.*, checks signed by the defendant Otto Berg, Jr., payable to the other defendant, his father. I have them here and I think counsel for the insurance company saw them at the time the depositions were taken. [2]

The Court: During the recess, the Court Reporter will give those additional exhibits numbers to follow the numbers already issued, and all exhibits will be considered offered and admitted as



trial exhibits, taking the same numbers as the pre-trial exhibits, subject to any objections that might have been stated at the pre-trial and any further objections that may be stated at any time in this trial.

Mr. Skulason: Your Honor, these checks may be marked as one exhibit?

The Court: We will mark them after a while.

Mr. Skulason: Yes, your Honor.

Mr. Winslow: In connection with the exhibits, your Honor, at the pre-trial I did not have the exhibit marked, because it is admitted and stated in the pleadings, but, in order to have the exhibits in chronological order, I think this should be marked. It is the statement to the plaintiffs for the premium charged. It is set forth in the reply and is admitted.

Mr. Snow: No objection. I am not sure as to the status of the depositions which have heretofore been taken in this case.

The Court: Some lawyers like to introduce them and some do not. If you want to give them exhibit numbers, that may be done.

Mr. Snow: I wish to reserve for the record objection to certain testimony adduced on cross examination of these witnesses, [3] which would tend to show parol transfer of the Wishram to the ladies, and I wish to reserve in the record an objection to any and all testimony tending to show transfer of the dredge in any other manner than as required by the statutes of Oregon.

The Court: It is so understood.



Mr. Phillips: As I understand, the exhibits are all in evidence and will be marked as numbered in the pre-trial.

The Court: Yes.

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The following exhibits, heretofore marked at pre-trial conference, were thereupon received in evidence:

DEFENDANT UNIVERSAL INSURANCE COMPANY'S  
EXHIBITS

Defendant's Exhibit No.	Description
1	Document showing specifications of Umpqua Chief and Julia D.
2	Letter dated September 26, 1946, United States Department of Commerce, Weather Bureau.
3	Photostat copy of instructions for airway meteorological service.
4	Photostatic copy of instruction for airway meteorological service.
5	Surface weather observations, October 17, 1945, to November 8, 1945.
6	Deposition of Hugh Corgan, taken on behalf of defendant, May 29, 1946.
7	Depositions of Hugh Corgan, Frances M. Steinbach, Carolyn S. Steinbach, David E. Steinbach, John Steinbach and Wendell Charles Wilson, taken on behalf of defendant at Tillamook, Oregon, June 17, 1946, together with exhibits attached thereto marked 7(1), 7(2-a to e), 7(3), 7(4), 7(5), 7(6), 7(7), 7(8), 7(9), 7(10), 7(11), 7(12), 7(13) and 7(14).

Defendant's  
Exhibit No.

Description

[Attached exhibits 3, 4, 11 and 14 are set out in Transcript of Record as follows:

No. 7(3) on page 219      No. 7(11) on page 224  
No. 7(4) on page 223      No. 7(14) on page 224]

- 8      Depositions of Otto Berg and Otto Berg, Jr., Third Party Defendants, taken on behalf of Third Party Plaintiff October 17, 1946—with exhibits attached.
- 9      Deposition of George N. Williams, taken on behalf of Defendant and Third Party Plaintiff, San Luis Obispo, California, October 24, 1946.
- 10     (Reserved for deposition of Herbert P. Lederer.)
- 11     (Reserved for deposition of Rex Davenport.)
- 12     (Reserved for deposition of Ed Fisk.)
- 13     Copy of letter dated Tillamook, Oregon, May 31, 1945, addressed to J. H. Corgan and signed J. L. Steinbach.  
[Set out on page 225 in Transcript of Record.]
- 14     Certified copy of Certificate of Assumed Business Name, Steinbach Iron Works.  
[Set out on page 226 in Transcript of Record.]
- 15     Certified copy of Agreement and Conveyance, Coast Dredging & Construction, Ltd.
- 16     (Reserved for log pages, Umpqua Chief.)
- 17     U. S. Coast and Geodetic Survey Map, Entrance to Tillamook Bay.
- 18     U. S. Engineers Blue Print No. TM-1-128, Entrance to Tillamook Bay.
- 19     (Reserved for Inventory of Wishram.)
- 20     (Reserved for piece of hawser in possession of Wendell Wyatt.)

Defendant's  
Exhibit No.

Description

- 20½ Check dated November 30, 1945, payable to Frances M. Steinbach and Carolyn S. Steinbach, \$187.50, signed Addison P. Knapp Co.

PLAINTIFFS' EXHIBITS

Plaintiffs'  
Exhibit No.

Description

- 21 Letter dated May 25, 1945, addressed to Captain Hugh Corgan, from Office of District Engineer.  
[Set out on page 228 in Transcript of Record.]
- 22 Letter dated June 6, 1945, Office of District Engineer addressed to Captain Hugh Corgan.  
[Set out on page 229 in Transcript of Record.]
- 23 Policy No. PC50295, Universal Insurance Company.
- 24-A Statement covering additional Premium on Policy PC50295, \$571.76.
- 24-B Endorsement to Policy, etc.
- 24-C Letter dated July 18, 1945, Addison P. Knapp Co. to Captain Hugh Corgan.
- 25 Letter dated October 17, 1945, Addison P. Knapp Co. to "Captain Hugh Corrigan," Rockaway, Oregon.  
[Set out on page 230 in Transcript of Record.]
- 26-A } Envelope from Addison P. Knapp Co. addressed  
26-B } to Captain J. H. Corgan, Garibaldi, Oregon, post-  
26-C } marked October 3, 1945; letter dated October 30, 1945, Addison P. Knapp Co. to Captain J. H. Corgan, Garibaldi, Oregon; and endorsement dated October 24, 1945, issued by Universal Insurance Company for Policy PC50295 issued to Frances M. and Carolyn S. Steinbach.  
[Set out on pages 231-232 in Transcript of Record.]

Plaintiffs' Exhibit No.	Description
27-A } 27-B }	Envelope marked from Addison P. Knapp Co., Portland, Oregon, addressed to Mrs. Frances M. Steinbach and Mrs. Carolyn S. Steinbach, Tillamook, Oregon, postmarked November 30, 1945, and letter on letterhead of Addison P. Knapp Co. addressed to Frances M. Steinbach and Carolyn S. Steinbach and signed by Addison P. Knapp Co., dated November 30, 1945. [Set out on page 233 in Transcript of Record.]
28	Copy of letter dated December 13, 1945, addressed to Addison P. Knapp Co., Portland 4, Oregon (written by Frank Lonergan, attorney representing plaintiffs). [Set out on page 235 in Transcript of Record.]
29	Letter dated December 27, 1945, to Honorable Frank J. Lonergan, signed by MacCormac Snow. [Set out on page 236 in Transcript of Record.]
30	Account Book, First National Bank of Portland, Tillamook Branch, No. 5384, Frances M. Steinbach, showing deposits commencing June 3, 1944, and ending April 6, 1946.
31	Check dated June 6, 1945, payable to First National Bank of Portland, Tillamook Branch, in amount \$675.60, signed Frances M. Steinbach. [Set out on page 238 in Transcript of Record.]
32	Check dated June 25, 1945, payable to Addison Knapp & Co., in amount \$1,250, signed Frances M. Steinbach. [Set out on page 239 in Transcript of Record.]
33	Check dated October 30, 1945, payable to Addison P. Knapp Co., in amount \$187.50, signed Coast Dredging & Construction, Ltd., J. H. Corgan. [Set out on page 240 in Transcript of Record.]

Plaintiffs'

Exhibit No.	Description
34-A } 34-B }	Envelope addressed to "Jimmy Corregon," Rockaway, Oregon, postmarked October 19, 1945, and letter, undated, addressed to "Jimmy Corrigan," Rockaway, Oregon, and signed by Rex Davenport. [Set out on page 241 in Transcript of Record.]
35	Copy of Coast Guard Log, under date of November 1, 1945.

DEFENDANT'S EXHIBIT

Exhibit No.	Description
36	Bill of Sale of licensed vessel under 20 tons, Otto Berg to C. F. Youngblood, Depoe Bay, Oregon, covering Julia D.

PLAINTIFFS' EXHIBITS

Exhibit No.	Description
37	Statement, Addison P. Knapp Co. to Frances M. and Carolyn S. Steinbach, dated October 24, covering Universal Policy PC50295, Dredge Wishram. [Set out on page 242 in Transcript of Record.]

THIRD PARTY DEFENDANTS' EXHIBIT

Exhibit No.	Description
38	Sixteen checks drawn on Tillamook Branch, The First National Bank of Portland, payable to Otto Berg and signed by Otto Berg, Jr.

\* \* \* \* \*

## JOHN L. STEINBACH

was thereupon produced as a witness on behalf of plaintiffs and, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Winslow:

Q. Your name is John L. Steinbach?

A. Yes.

Q. Where do you live, Mr. Steinbach?

A. Tillamook.

Q. How long have you lived in that territory?

A. Thirty-four years.

Q. What has been your principal business during that time?      A. Operating a machine shop.

Q. Have you, in your work, had experience in boat building and dealing with boats?

A. Yes.

Q. Just briefly, what has been the experience?

A. In 1918 I was in partnership with a man by the name of Phinney and we had a contract with the United States Shipping Board and we constructed one type of hull.

Q. How large a boat was that?

A. 300 feet long. In 1943 we had a contract with the United States Maritime Commission to build three 65-foot tugs which were delivered to the British Government, and we did general boat repair. We are right on the waterfront and have been [14] doing general boat repair for years.

(Testimony of John L. Steinbach.)

Q. About when did you become acquainted with the Dredge Wishram?

A. During 1943 I made two calls on the Army Engineers at the Pittock Block here in Portland, trying to get a small dredge in Tillamook Bay to dredge the basin in front of the outfitting dock so when our boats were launched——

Q. I don't think we will go into that so much at this time, Mr. Steinbach. In the year 1945 just briefly tell the Court whether or not you were notified the Wishram was being offered for sale?

A. Yes, we received an invitation to bid on her in 1945.

Q. At that time what was your relationship with Captain Hugh Corgan?

A. Well, we had known Mr. Corgan for many years, had business dealings with him, and we contacted him at the time we contemplated making a bid on this dredge, and we entered into a tentative agreement between my brother and Corgan and myself that if the dredge was purchased we would form a company, a dredge company, and engage in the dredge business, dredging business, and each to have a one-third interest. Mr. Corgan was not able to advance any of the money, but he would take a working interest and pay it out as the dredge paid out.

Q. I am handing you Plaintiffs' Exhibit O. Did you see that letter shortly after it was written? [15]

Mr. Snow: Pardon me, your Honor. I haven't had any notation of Plaintiffs' Exhibit O. Are you giving this a special number?



(Testimony of John L. Steinbach.)

Mr. Winslow: It may be 24.

A. 21, I believe it is. Isn't it 21?

Q. All right.

Mr. Snow: Plaintiffs' Exhibit No. 21.

Q. (By Mr. Winslow): Yes, 21.

A. Yes, I saw this.

Q. The Captain Hugh Corgan there named in the letter, whom was he acting for at that time?

A. He was acting for the Steinbachs.

Q. What was done after you received that letter in regard to raising the money to pay the purchase price of the Dredge Wishram?

A. Well, we——

Q. I don't care to go to much into detail, but was the money raised?

A. Yes, the money was raised.

Q. Who contributed the money that went to pay for the Wishram?

A. My brother and I, I believe in the neighborhood of \$3800, and then we borrowed \$3825. I believe that was the amount—and we borrowed from my wife \$1675 and that would make \$5500.

Q. Your wife is the plaintiff Frances Steinbach? A. That is right. [16]

Q. What was done with that money?

A. My wife and I came into Portland together and we purchased a certified check or draft and Mr. Corgan and I went up to the Army Engineers office together, and Mr. Corgan handed them the check and the letter from the Army Engineers accepting the check to Captain Corgan was handed

(Testimony of John L. Steinbach.)

to him and he turned right around and handed it to me.

Q. I am handing you Plaintiff's Exhibit No. 22. Is that the letter which you say the Army Engineers gave to Captain Corgan? A. It is.

Q. Had Captain Corgan or anyone else, except the Steinbachs, contributed anything to the purchase price of the Dredge? A. No.

Q. Prior to the purchase of the dredge, or at the time of the purchase of the dredge, was there any discussion between the Steinbachs as to who was to hold title to the dredge Wishram?

A. There was.

Q. Go ahead and give it.

Mr. Snow: At this point, your Honor, I desire to enter an objection to any and all testimony which might tend to prove parol title to this dredge, on the ground that the Oregon statute provides, and on the further ground that from time immemorial the transfer of boats and vessel have been and are made by bills of sale. It is not customary or lawful to [17] transfer a vessel by parol and especially under the Oregon statute it is not a lawful transfer. What this family might have agreed upon among themselves about Captain Corgan's boat would not be binding on this insurance company.

The Court: He may answer, subject to the objection.

(Pending question read.)

A. We had received an invitation to bid on this

(Testimony of John L. Steinbach.)

dredge, I think, some time in March or April, and we had not received our settlement from the Maritime Commission on these tugs. We had contemplated a purchase for several years, when the sale came up, and we had not received this settlement, and, so, we were not in a position to bid on the dredge at the time and we did not offer a bid.

Q. (By Mr. Winslow): My question is as to the discussion between you Steinbachs.

A. I am trying to lead up to it.

Q. Make it as brief as possible.

A. I was trying to lead up to how it came about.

Mr. Snow: May I have a continuing objection to all this testimony, to testimony of this character, your Honor?

The Court: It may be understood.

A. Shortly after the bids were opened, we received a letter from the Army Engineers asking us to offer a private bid. Previous to this, we had made a tentative agreement on the matter, in case we did purchase a dredge, so, after we received [18] this letter from the Army Engineers, requesting us to make a private bid, my wife and I came up to Portland and met with Mr. Corgan at his home, and he expressed regret that we had not gone ahead with it, for several reasons. He wanted to get back in the dredging business and also make a place for his son who was coming out of the service.

Going home that night, we talked it over in the car and my wife said, "John, I like the idea of Corgan—like the idea that Corgan has of making

(Testimony of John L. Steinbach.)

this business available for his son," and we had a son in the service and my brother had two. She said, "If you haven't enough money—if you and Dave cannot raise enough money between you, I have some money that I have saved from teaching and I will loan you some."

Q. Was your wife teaching school then?

A. Well, yes, she was teaching. She was a teacher when we were married and when our oldest son started to college she went back to teaching school.

We had not received our settlement from the Maritime Commission. They held us up for two years and two months before we got a final settlement, so we owed some bills on these boats and, in order to avoid any complications, we agreed among ourselves—we did not put it in writing—that we would take on this dredge and the insurance and any other papers would be made out in the wives' names and be held that [19] way until such time as we had our dredging company organized and had it in operation.

Q. All right. When did the matter of having the dredge insured then come up?

A. On June 6th, when we received this letter.

Q. That is Plaintiffs' Exhibit No. 22 you are referring to?

A. Yes, No. 22. After we had paid the money in at the Army Engineers, Mr Corgan and I went down to Mr. Knapp's office. I had never met Mr. Knapp but Mr. Corgan had. There was some conversation

(Testimony of John L. Steinbach.)

with him about the insurance, and, in discussing the amount of the insurance to be carried——

Q. Give the Court the benefit of that discussion you had about the amount of insurance.

A. Yes. I was interested in just the insurance being enough to cover, to protect us for the amount that we had paid for it. I thought we should insure it for not over \$10,000 and probably \$8,000. We were kind of short of money. Mr. Knapp said that wasn't the way marine insurance was handled. He said it was necessary, before he wrote the policy, to have a survey made to determine the value and just what the insurance should be, and it would be insured for 50 per cent of the appraised valuation.

Mr. Snow: For what per cent?

A. 50 per cent.

Q. (By Mr. Winslow): Go ahead. [20]

A. While we were there, we arranged to insure the dredge while it was lying at the dock at North Bend, before the tow, against fire and sinking. Mr. Knapp asked Corgan, he said, "Cap, is this to be made out in your name?" And he said, "No" and pointed to me and said, "Steinbachs'." So I told Mr. Knapp——

Q. Tell what you told Mr. Knapp.

A. I told Mr. Knapp that this dredge had been bought for the benefit of the Steinbach wives and to make the insurance out to Carolyn and Frances Steinbach.

Q. What did he say?

A. That was all there was to it.



(Testimony of John L. Steinbach.)

Q. Did you have with you, at the time of this conversation with Knapp, Plaintiffs' Exhibit No. 22, the letter which you now have in your hand?

A. I had it in my pocket.

Q. Was Mr. Rathbun there? A. No.

Q. Did you ever meet Mr. Rathbun?

A. I never seen the man.

Q. As far as you know, did the ladies, that is, your wife and the wife of Dave, and yourself, ever transfer that boat at any time after that up to the time of the loss? A. No.

Q. Orally or otherwise? [21] A. No, sir.

Q. Mr. Steinbach, did you have anything to do with the arrangement for towing of the Dredge Wishram from Nehalem Bay to Tillamook Bay?

A. No.

Q. When was it that you learned that the dredge had been lost?

A. It was on a Friday morning, Friday forenoon.

Q. How long after the dredge had been lost?

A. The day following. It was lost in the evening, I understand, the day before. Mr. Corgan and Jim came into the shop and told me.

Q. After that did you have any negotiations or conversation with Mr. Knapp of the insurance company? A. No.

Q. By telephone or otherwise?

A. Mr. Rathbun called me.

Q. When was that?

(Testimony of John L. Steinbach.)

A. That was on the following day, on Saturday afternoon. I think it was the 3rd of November.

Q. What was the conversation you had with him then?

A. He said, "You people have lost a dredge down there, and you got a fishing boat to tow it and your insurance is void."

Q. I did not get the last.

A. He said, "Your insurance is void." [22]

Q. Go ahead.

A. And he said, "You were supposed to have gotten the Umpqua Chief," and I said, "I didn't know anything about that." He said, "It is written right in your policy."

Well, I went home—of course, I didn't have that rider there. I had the original policy that was in my wife's safe that had been written when they brought her up from Marshfield. I went and checked on it and there was no mention of the Umpqua Chief in that.

Q. Just a minute. I am handing you Plaintiffs' Exhibit No. 23. Is this the insurance policy that you examined?

A. Yes, it is.

Q. After you examined that policy, what did you do? Did Mr. Rathbun say anything about coming to Portland?

A. During the conversation he said, "You come in here Monday," and in this conversation on the telephone he said he was Mr. Rathbun. I didn't know if he was. I supposed it was him. I went home and checked on this policy and then—I didn't



(Testimony of John L. Steinbach.)

come to Portland on Monday but my brother Dave and Mr. Corgan came up here and they met up in the insurance office on Tuesday.

Q. Of course, you don't know about that.

A. I don't know anything about that. I didn't come.

Q. Had you, prior to the talk with Mr. Rathbun on what was probably the 3rd of November ever heard or had any suggestion [23] made to you that the dredge was supposed to be towed by the Umpqua Chief?

A. No. Mr. Corgan was in about two weeks before or a week or ten days before and he said,—

Q. That probably would not be admissible, what Mr. Corgan told you.

A. All right.

Q. But you had no knowledge of the Umpqua Chief being required?

A. No.

Q. When you examined the insurance policy, you found nothing in there about the towage being required to be made by the Umpqua Chief?

A. Nothing.

Q. When did you first find out that there was something said about the Umpqua Chief?

A. When Mr. Rathbun called me up on the 3rd of November.

Q. Two days after the loss?

A. That is right.

Q. Do you claim any interest in that dredge now, adverse to your wife?

A. No.

Mr. Snow: That is objected to, your Honor, on the same ground.

(Testimony of John L. Steinbach.)

The Court: Admitted, subject to the objection.

Mr. Winslow: You may cross-examine.

### Cross-Examination

By Mr. Snow:

Q. I believe you said you have been in the machine shop business in Tillamook for a good many years?      A. That is right.

Q. You and your brother, David Steinbach, are partners in that business, are you?      A. Yes.

Q. Do you have an assumed business name certificate on file with the County Clerk of Tillamook County?      A. We do.

Q. I hand you Exhibit No. 14 and ask you if that is the assumed name certificate of the Steinbach Iron Works or a certified copy of it?

A. It is.

Q. Is that correct, Mr Steinbach?

A. Yes, sir.

Q. That certificate shows only yourself and your brother David as partners in that business, does it not?      A. That is right.

Q. And that is correct, you and your brother David are the sole and only partners of the Steinbach Iron Works?      A. That is right.

Q. Your wife is Frances M. Steinbach, is she?

A. That is right.

Q. You spoke about your wife lending some money for use in the purchase of the dredge?

A. I did.

(Testimony of John L. Steinbach.)

Q. I will refer you to Defendant's Exhibit No. 11 to the deposition taken in Tillamook June 17, 1946, which deposition is marked Pre-Trial Exhibit No. 7. I will ask you if that——

Mr. Winslow: What is that deposition?

Mr. Snow: Exhibit No. 7 is the deposition.

Mr. Winslow: Yes.

Mr. Snow: And Exhibit No. 11 of Exhibit No. 7 is the document to which I am calling the witness' attention.

Q. I will ask you what that document is?

A. That is a promissory note.

Q. That is a promissory note signed by the Steinbach Iron Works? A. Yes.

Q. And that is signed by yourself and also by your brother? A. That is correct.

Q. Is that your true signature there?

A. That is right.

Q. Is that the true signature of your brother?

A. It is.

Q. Is that the signature of the Steinbach Iron Works? A. It is. [26]

Q. The Steinbach Iron Works is a partnership, the partnership to which we have just referred?

A. That is right.

Q. That note is in the amount of \$2925?

A. It is.

Q. Is that the full amount of money advanced by your wife? A. Yes.

Q. In connection with the dredge?

A. That is right.

(Testimony of John L. Steinbach.)

Q. You said that you and your brother originally borrowed from her \$1675. Is that \$1675 included in the amount named in the promissory note?

A. It is.

Mr. Snow: I offer in evidence that promissory note. I think, your Honor, the pre-trial exhibits have all been offered and received in evidence and that includes the depositions as I understand it, and may it be understood that that also includes the exhibits identified at the time of the taking of the various depositions?

The Court: Yes, on the same basis as suggested before.

Mr. Snow: At this time, your Honor, I wish to note my reservation and objection to the parol testimony tending to show transfer of title by parol in the depositions, as well as the oral testimony.

The Court: Were there eleven exhibits or perhaps more [27] exhibits attached to the depositions?

Mr. Snow: There are more than eleven exhibits.

The Court: Then, when that comes in as a trial number, you will have to give it a different number.

Court will now recess until 2:00 o'clock.

(Recess.)

(Court reconvened at 2:00 o'clock p.m., pursuant to recess.)

Q. (By Mr. Snow): At the close of the morning's session, we were talking about Exhibit 11 attached to Exhibit No. 7, the depositions. I will ask the Bailiff to hand you that exhibit that you say

(Testimony of John L. Steinbach.)

is a promissory note given by you and your brother to your wife Frances, is that correct?

A. That is right.

Q. That represents the full amount of the borrowings of yourself and your brother from your wife in connection with the dredge? A. Yes.

Q. Now, I am asking you to turn in that same Exhibit No. 7, the volume of the depositions, to Exhibit No. 14, attached to Exhibit No. 7. I will ask you to state what Exhibit No. 14 is?

A. A page of a ledger sheet. [28]

Q. Is that a page of the ledger sheets of the Steinbach Iron Works?

A. I think it is, yes.

Q. Did you say yes? A. Yes.

Q. And that is the account of the Steinbach Iron Works with your wife Frances, is it not?

A. That is right.

Q. The name at the top, "Frankie", refers to your wife, does it? A. Yes.

Q. And on that ledger page, you and your brother have debited yourselves with \$2925, have you not? A. We have.

Q. Is that equivalent to the amount of the promissory note? A. I didn't hear that.

Q. Is that equivalent to the amount of the promissory note? A. Yes.

Q. And does it represent the same borrowings as evidenced by the note? A. That is right.

Q. Well, you and your brother have made some

(Testimony of John L. Steinbach.)

payments on that note, as shown by that ledger sheet, haven't you?      A. Yes, we have.

Q. Those payments aggregate \$1275? [29]

A. That is correct.

Q. Those payments were made on August 27th, September 30th and October 20th in the year 1945, were they not?

A. Three of them, and then there is one credit by check from Knapp, return on insurance, the first item.

Q. Was that the return on the insurance covering the trip from Tillamook Bay to Nehalem Bay?

A. From North Bend to Nehalem Bay.

Q. North Bend to Nehalem or Tillamook Bay?

A. No, it is down at Coos Bay.

Q. I beg your pardon. Coos Bay to Nehalem Bay, then?      A. Yes.

Q. On and after October 20th, the last date shown on the ledger page, you and your brother still owed your wife \$1650, is that right?

A. Yes.

Q. Have no payments been made on the debt since that time?      A. No.

Q. Have you been advised by your counsel to hold that account in the same status, pending this lawsuit?      A. We have never discussed it.

Q. Never discussed it?      A. No.

Q. That promissory note to your wife is entirely unsecured, is it not? [30]      A. Right.

Q. Never has been secured?      A. No.

Q. When you and your brother borrowed that



(Testimony of John L. Steinbach.)

money from your wife, you expected to pay it back, didn't you?

A. Well, we expected to pay it back, and we didn't get it all paid back, when the dredge was in operation the dredge was to pay it back, from earnings of the dredge.

Q. You are going to carry out that intention and pay the amount of that note back?

A. Yes.

Q. You are going to pay her all the \$1650 you owe her?      A. We are.

Q. You are going to do it regardless of how this case comes out?      A. We are.

Q. That money that your wife loaned you came from her separate earnings and savings?

A. It did.

Q. Her earnings teaching school?

A. Yes.

Q. As far as the loss of this dredge is concerned and this outstanding insurance policy, it won't make any difference whether you collect that money, or whether your wife collects that money as a result of this lawsuit or not; she is going [31] to get \$1650, isn't she?      A. She sure is.

Q. Then, as far as the loss of the dredge is concerned, she is going to get the \$1650 just the same with the dredge lost as if it had not been lost, isn't she?      A. Absolutely.

Q. Then, your wife, in respect to that debt, isn't going to benefit or would not have benefited by the safe arrival of the dredge at Tillamook Bay?



(Testimony of John L. Steinbach.)

A. Well, I don't know how you mean that, Mr. Snow.

Q. What I mean is: She would still get her \$1650 back?

A. Would still get her \$1650 back.

Q. She is not prejudiced by the loss of the dredge, is she, because she will still get her money back?

Mr. Winslow: I think that is argumentative.

The Court: Go ahead.

Mr. Winslow: I think it is argumentative and immaterial.

Q. (By Mr. Snow): She is not going to be prejudiced by the loss of the dredge, is she?

A. Well, I think she will be.

Q. But she will get her \$1650 back?

A. She will get her \$1650 back, but we hold our property in common. If I make a loss, she loses, too.

Q. You say you hold your property in common. You don't hold [32] your wife's school teaching funds——

A. No, she went out and earned that herself.

Q. She went out and earned that herself; her own money? A. Her own money.

Q. You mean if you lose money you are not going to be able to supply the household as fully as if you made money, and she would lose in that respect? A. Right.

Q. You do not mean that she would be actually

(Testimony of John L. Steinbach.)

out any money herself by the loss of the dredge, do you?

A. Well, what's mine is hers. She would lose to that extent, wouldn't she?

Q. You are a generous man. You say what is yours is hers? A. Sure.

Q. But you have also said that what is hers is her own, isn't that correct?

A. Well, what she went out and earned, that is hers.

Q. That is hers? A. You bet your life.

Q. You are familiar, aren't you, with Exhibits 21 and 22 without my handing them to you—these exhibits we have been talking about this morning?

Mr. Winslow: That I had this morning.

A. Yes.

Q. (By Mr. Snow): Those are letters from the corps of Engineers [33] to Captain Corgan?

A. That is right.

Q. Transferring the dredge to him?

A. Yes.

Q. You now have those letters in your hands?

A. Yes.

Q. I think you said, but I want to make sure of it: There has been no paper written and signed by anybody, purporting to change the title of that dredge since those letters were signed?

A. That is all.

Q. Captain Corgan has never signed anything to transfer the dredge, has he? A. No.

Q. In June of 1945 the Steinbach Iron Works

(Testimony of John L. Steinbach.)

had not made any settlement with the Maritime Commission in respect to the three tugs built for the British Government?      A. That is right.

Q. That shipbuilding venture was not very successful, was not a very successful one on the part of the Iron Works?

A. Well, it would have been if we had a just settlement from the Maritime Commission.

Q. If you had what?

A. If we had received a just settlement from the Maritime Commission. [34]

Q. You had not received any settlement at all in June of 1945, had you?

A. No, we hadn't.

Q. Do you recall my coming down to Tillamook in, I think, June, 1946, and taking your deposition and the depositions of the other members of the family?      A. Yes.

Q. I think you said at that time that settlement had been made just very shortly before those depositions were taken, is that correct?

A. That is right.

Q. But, until that settlement was made, the Iron Works, the Steinbach Iron Works, was in a precarious, a rather precarious financial condition, wasn't it?      A. I would say so, yes.

Q. When you were in Portland, discussing with Mr. Knapp about the policy, and when you told him to issue the policy in the names of your wives, your wife and David's wife, you did that, knowing that if there was a loss, none of that insurance

(Testimony of John L. Steinbach.)

money would go to the Steinbach Iron Works, didn't you?

A. Absolutely; didn't want to get mixed up with creditors on this shipbuilding deal.

Q. Talk louder.

A. When we got through with the shipbuilding deal, we had [35] \$29,000 coming from the Maritime Commission and we owed \$16,000. These creditors waited twenty-seven months before we could pay them. There was nothing coming there to protect the creditors.

Q. You did not want these creditors to get hold of that money from the dredge?

A. No, they were protected anyway.

Q. But you did not want them to get hold of any of the dredge money, is that it?

A. That is right.

Q. You didn't want them to get hold of any dredge money. That is one of the reasons you wanted the insurance policy in the names of the ladies?

A. That is right. We didn't want them to become involved in the Iron Works business.

Q. You testified, if I understood you correctly, this morning, that you told Mr. Knapp that the dredge was bought for the benefit of the two ladies?

A. That is right.

Q. I want to have you search your memory, and I am going to ask you if it is not true you told Mr. Knapp that the dredge was bought by the two ladies?

(Testimony of John L. Steinbach.)

A. I don't remember just what exactly—that has been nearly two years ago.

Q. At any rate, you did not tell him that Captain Corgan had [36] taken the letters of transmittal from the Government, had taken title from the Government to the dredge? A. No.

Q. You did not tell him Corgan really owned the dredge, did you?

A. No, I didn't, because he didn't.

Q. Is it not a fact that you told them that the ladies owned the dredge? A. Yes.

Q. Did you also tell him the ladies bought the dredge from the Government?

A. I don't remember just what was said. I said that the—no, I can't remember just what I said two years ago.

Q. I think you were confused about your testimony and that is why I would like to get it straightened out. You said when you talked with Mr. Knapp about the amount for which the dredge should be insured that he said that the dredge should be insured for 50 per cent of the appraised value.

I will ask you if it is not more accurate to say that Mr. Knapp said that the surveyor would fix two values to the dredge, one, its reproduction cost and the other its depreciated value, and that then those two amounts should be added, and the amount at which the dredge would be insured would be fixed at 50 per cent of that sum? Isn't that more nearly right? [37]

(Testimony of John L. Steinbach.)

A. I don't recall that, if he said that or not.

Q. The only basis upon which you make any claim that these two ladies owned the dredge was the family conference among members of the Steinbach family?

A. That is right.

Q. Is that right?

A. That is right.

Q. Did Captain Corgan attend this conference?

A. No.

Q. The answer is no?

A. Yes.

Q. Then the agreement by which you claim the ladies came to own the dredge was entirely an agreement made, without writing, between the four members of the Steinbach family?

A. That is right.

Q. I want you to refer, if you will, to Exhibit No. 3 attached to Exhibit No. 7, the depositions. That is the assumed business name certificate in the name of the Coast Dredging & Construction, Ltd., is it not, a certified copy?

A. Yes.

Q. It shows that Hugh Corgan and J. H. Corgan are the persons interested in conducting the business of the Coast Dredging & Construction, Ltd., is that correct?

A. That is right.

Q. It is dated July 23, 1945. Were you familiar with that [38] document when it was executed by Captain Corgan and his son?

A. I was.

Q. What was the purpose of the document?

A. This was the assumed business name certificate.

Q. Was that to organize some sort of a company to operate the dredge?

A. It was.



(Testimony of John L. Steinbach.)

Q. What is that? A. It was.

Q. I will ask the Bailiff to hand you another exhibit, Exhibit No. 15. This document is dated the same date as the assumed business name certificate of the Coast Dredging & Construction, Ltd., namely August 23, 1945, is it not?

A. Yes, the 20th of August.

Q. It is recorded on August 20th but it is dated July 23, 1945. It is dated and acknowledged July 23rd, is that correct?

A. It says here August 20th, doesn't it?

Q. Yes, it says that it was recorded on August 20th, does it not? A. Yes.

Q. It shows that it was filed for record August 20th at Tillamook County? A. That is right.

Q. That is a certified copy of a document, is it not? A. I would say it is, yes. [39]

Q. Your name appears in it? A. Yes.

Q. It purports to transfer from Hugh Corgan and his wife to Hugh Corgan, J. L. Steinbach, yourself, and D. E. Steinbach, Trustees?

A. That is right.

A. Well, this, as I said——

Mr. Winslow: The agreement is the best evidence and speaks for itself.

A. This is a trust agreement.

Mr. Winslow: It seems to me like it speaks for itself.

Mr. Snow: Perhaps I should have asked this question: Will you explain the circumstances under



(Testimony of John L. Steinbach.)

which that document, Exhibit 15, was executed and recorded?

A. Well, we tried to carry out the purposes of what we had started out to do when we bought that dredge. We intended to organize a dredging company with Dave Steinbach, Hugh Corgan and myself, to take over this dredge and operate it and, as the dredge earned money, the money that was advanced by the wife would be paid back, and then the dredge would become our property and each one of us would have a one-third interest.

Q. This concern, the Coast Dredging & Construction, Ltd., was then to be the eventual owner of the dredge, was it?

A. After the money that had been advanced had been paid, yes. [40]

Q. After repayment to the Steinbach Iron Works of the money that they had advanced in connection with the dredge, the money they paid out?

A. Yes.

Q. You spoke this morning about dividing that business up three ways, a third to you, a third to your brother David and a third to Hugh Corgan, is that right?

A. Yes.

Q. Is that the way you were going to distribute the expenditures under this trust?

A. With the exception of the shares that we were to give Jim Corgan, we were going to divide 100 shares up equally, three ways, and that is covered by a letter that I wrote Corgan along the spring of the year before we bought the dredge; we

(Testimony of John L. Steinbach.)

were going to make an equal division, and there would be a share or two that we could not divide equally, and Jim was to get that share?

Q. Jim was to have a few shares?

A. I think we were dividing it up into 96 shares and each one of us was to have one-third of that and Jim was to have 4 shares.

Q. You and Dave and Hugh Corgan were each to have 32 shares, making a total of 96, and Jim was to have 4 in addition, making 100?

A. I think that is the way it was divided. [41]

Q. At any rate, you did not contemplate your wives would be interested in this trust at all?

A. Not after the dredge was paid for.

Q. I wish you would turn to Exhibit No. 7. I want to discuss something in connection with the financial operation of the dredge. The dredge was operated during the summer of 1945, was it not?

A. I think it operated about two months.

Q. Who managed it? A. Mr. Corgan.

Q. Did his son Jim help him? A. Yes.

Q. Did the Steinbach Iron Works advance some money for that purpose?

A. We did. We took care of the payrolls until they got to earning money.

Q. That was in addition to the money that had already been advanced by your wives for the purchase of this dredge? A. That is correct.

Q. I return to Exhibit No. 4 attached to Exhibit No. 7 and I will ask you what that is.

A. That is a ledger sheet.

(Testimony of John L. Steinbach.)

Q. Is that a ledger sheet of the Steinbach Iron Works?

A. Well, it was in the Steinbach Iron Works ledger. My wife kept the books. She kept this in there to keep a record. She [42] kept this in among the other ledger sheets and accounts of the Steinbach Iron Works.

Q. She did, you say, keep this in among the other ledger sheets of the Steinbach Iron Works?

A. That is right. It is taken from the Steinbach Iron Works ledger.

Q. That purports to show everything that was disbursed and received on account of the dredge, doesn't it?

A. Up to July 20th. Before we were through, that showed a balance advanced of over \$8008.59 but at the time the dredge was lost, why, we had in the neighborhood of \$9400 in it. This is not a complete account here.

Q. The last item there—look on the reverse side.

A. Oh, yes. I didn't see the other side.

Q. That carries it out to October, doesn't it?

A. Yes, I guess so.

Q. Including work done on the cutter \$534.53, in October? A. Yes.

Q. Was that about the last advance that the Steinbach Iron Works made?

A. That was correct. That left a balance of \$9446.26.

Q. Yes. That work on the cutter was done by the Steinbach Iron Works? A. That is right.

(Testimony of John L. Steinbach.)

Q. That is a part of its machine shop work?

A. Yes.

Q. And the charge was based in the same way the Steinbach Iron Works would make charges against some other customers?

A. That is right.

Q. That ledger page shows the money that was received from your wife, Frances, doesn't it?

A. Yes, it does.

Q. Will you turn to Exhibit 12 attached to Exhibit No. 7 and look at that, please?

A. That is a copy of a statement filed with Jim Corgan, secretary of the dredging company.

Q. The secretary of the dredging company? That is headed at the top "Coast Dredge Co."

A. That is right.

Q. Does that mean the same as the Coast Dredging & Construction, Ltd.?      A. Yes.

Q. That shows that same balance that you mentioned a while ago of \$9446.26?      A. Yes.

Q. That, I take it, may be considered as representing the amount that the Coast Dredging & Construction, Ltd., finally owed the Steinbach Iron Works on account of the dredge?

A. What they owed the Steinbach family.

Q. What they owed the Steinbach family or the Steinbach Iron [44] Works?

A. It is all the same.

Q. It is all the same, is it?      A. Yes.

Q. I see. The Steinbach Iron Works still owes

(Testimony of John L. Steinbach.)

Frances Steinbach \$1650?           A. That is right.

Q. Is that right?           A. That is right.

Mr. Snow: That is all.

Redirect Examination

By Mr. Winslow:

Q. One question or two, Mr. Steinbach. In your cross-examination you referred to the fact that Mrs. Steinbach had put in something like \$1650 towards the purchase price, but she had contributed \$2900, a little more than \$2900, altogether. To what did she contribute besides the purchase price?

A. The insurance premium from North Bend to Nehalem.

Q. I now hand you Plaintiffs' Exhibit No. 32.

Mr. Snow: That is the \$1500 check?

Mr. Winslow: \$1250.

Mr. Snow: \$1250, yes.

Q. (By Mr. Winslow): I ask you what that check is, and what does it represent? [45]

A. A check to Addison Knapp Company, dated June 25th in the amount of \$1250 to pay insurance on the Dredge Wishram from Coos Bay to Nehalem Bay, signed by Frances M. Steinbach.

Q. And, of course, that was your wife?

A. Yes.

Q. That makes up the difference between the amount she contributed to the purchase price and the \$2900, the total amount she put in the dredge?

(Testimony of John L. Steinbach.)

A. I have the ledger account here. I could tell you in just a minute. That was No. 7, wasn't it, Mr. Snow? Yes, I think that is the difference.

Mr. Winslow: That is all.

Recross-Examination

By Mr. Snow:

Q. Let us carry that transaction a step further. That check that you have just described appears on the ledger account in the name of "Frankie", and I am referring now to Exhibit No. 7 and Exhibit No. 14. That appears as the June 23, 1945, item, \$1250, doesn't it? A. Yes.

Q. After the safe arrival of the dredge at Nehalem Bay, Mr. Knapp's company returned a check for \$414.74, isn't that right?

A. I believe that is the amount, yes.

Q. You recall that check was made payable to the two ladies? [46] A. That was.

Q. And Mrs. Dave Steinbach then endorsed it over to your wife? A. That is right.

Q. So, the Steinbach Iron Works took credit for that amount on their ledger sheet with your wife? A. That is right.

Q. That is correct, is it? A. Yes.

Mr. Snow: That is all.

(Witness excused.) [47]



DAVID E. STEINBACH

was thereupon produced as a witness on behalf of the plaintiffs and, being first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Winslow: If the Court please, I am handing up to your Honor Plaintiffs' Exhibits 24 and 25. I think they should be called particularly to the Court's attention, along with this other testimony that this witness will give.

By Mr. Winslow:

Q. Your name is D. E. Steinbach?

A. Yes.

Q. Speak up. Don't nod your head. You live at Tillamook?

A. Yes.

Q. How long have you lived in that community?

A. Since the year of '19.

Q. You are associated with J. L. Steinbach in the Steinbach Iron Works?

A. Yes, sir.

Q. Mr. Steinbach, when Captain Hugh Corgan was negotiating for the purchase of the Dredge Wishram, tell the Court whom he was representing?

Mr. Snow: Objected to, your Honor.

Mr. Winslow: I agree the question in form is terrible, and I will reframe it.

A. He was representing my brother John and the two wives [48] and myself.

Q. (By Mr. Winslow): In the purchase of the dredge, did Captain Corgan contribute anything to the money for the purchase or expenses therefor?

A. No.



(Testimony of David E. Steinbach.)

Q. Who did contribute the purchase price of the dredge and the expense of getting the dredge?

A. Repeat that.

Q. Who did contribute the money for the purchase price of the dredge and the expenses of the insurance and so forth?

A. My sister-in-law, Frances Steinbach.

Q. Who else?

A. My wife, Carolyn Steinbach.

Q. The Steinbach Iron Works, did it contribute, too?

A. Well, yes, we contributed some, yes.

Q. Was there any other contribution except from the Steinbach family? Did any outsider contribute any amount?      A. No.

Q. Mr. Steinbach, at the time the dredge was purchased from the Government, or any time prior thereto, was there any discussion in the Steinbach family as to how the dredge should be purchased and in whose name or who should hold title to the dredge?

Mr. Snow: I understand I have a continuing objection to this line of testimony. [49]

The Court: It is so understood.

A. At the time of the purchase of the dredge, my brother, his wife and my wife, we met at our house and talked about what we were going to do when we purchased this dredge here to keep it out of the shop. On account of the financial difficulties there that we had with the Maritime Commission, we did not want to get it mixed up with the

(Testimony of David E. Steinbach.)

shop account, so we had put the insurance in the ladies' names to keep it away from the Iron Works.

Q. Go ahead and tell what was said.

Q. (By Mr. Winslow): Go ahead and tell what was said about whether the boat was to be purchased and held by the ladies or not?

A. I didn't quite get that.

Q. Tell what was said. What do you mean by keeping it out of the shop?

A. Well, like I said here a few minutes ago, we were so involved financially with the Maritime Commission and we did not know just how that was going to turn out one way or another, just how long we would have to wait for our money, and we also had loans from two private men there in Tillamook. One happened to the President of the First National Bank. Like my brother said, every time he went in the First National Bank he wanted to know how soon we were going to pay him back. So, what we did, we thought that would be the best way, if [50] we were going to purchase this dredge, to keep it out of the account of the Steinbach Iron Works account.

Q. Then what did you agree to do about the ownership of the dredge?

A. Well, we agreed to put it in the ladies' names.

Q. Has that agreement ever been changed in any way?      A. No, it never has.

Q. You have heard the testimony of your brother about the contributions of your wives and

(Testimony of David E. Steinbach.)

the amounts. John knows more about it than you, I take it? A. Absolutely.

Q. All right. Mr. Steinbach, did you have anything to do with the towing of the dredge at the time the dredge was lost? A. No.

Q. Were you present at any time during the time it was being towed? A. No.

Q. When did you learn that the dredge had been lost?

A. Well, if I recall the right date—that is something that is pretty hard for me to try to remember.

Mr. Winslow: I think we have agreed the dredge was lost November 1st.

Mr. Snow: That is right.

A. I think November 1st or November 2nd, about 10:30 in the morning, Mr. Corgan and Jim came into the shop and said, "They [51] lost the dredge. It went out on the rocks," and also informed my brother at the same time, so we went in the office and sat there, thinking what we were going to do next and finally Corgan told me, he said, "You had better call up the insurance company and tell them the dredge was lost."

Q. Did you do that? A. I did, yes.

Q. Whom did you call? Whom did you talk with?

A. Talked with Mr. Rathbun, if that is his name.

Q. What was the substance of the conversation?

A. I just told him who I was and I told him the Dredge Wishram was washed out on the end of the jetty, and he wanted to know when it hap-

(Testimony of David E. Steinbach.)

pened and I told him I couldn't give him the exact hour because I did not know what time in the evening, or did not know just what time it was, but I told him it was lost. He wanted to know if it was a total loss and I said, "Yes."

Q. Go ahead. Anything further?

A. Well, on that telephone conversation, it was rather short.

Q. Yes. Then what did you do the following day or following that conversation? Did you come to Portland?

A. I came to Portland on June—no, on November 6th or 7th.

Q. What date was it? A. On the 6th.

Q. What day was it, do you remember? [52]

A. Golly, George, I don't remember. I know it was about four days after.

Q. Did you go to Mr. Knapp's office then?

A. Yes.

Q. Who was with you?

A. Mr. Corgan and Jim Corgan.

Q. Tell the Court what took place when you went in there to see Mr. Knapp? What was the conversation?

A. We went into his office. He met us in the outer office with Mr. Rathbun. From there we went into Mr. Knapp's private office and sat down, and the conversation was about the wreckage of the *Wishram*. Of course, I was not acquainted with Mr. Knapp or Mr. Rathbun like Corgan was.

Q. Tell us what the conversation was.

(Testimony of David E. Steinbach.)

A. As close as I can tell, we got talking about the wreckage of the Wishram.

Q. Go ahead.

A. And he wanted to know what time it was.

Q. You tell what was said there at this time, Mr. Steinbach.

A. I will tell you. Of course, being a little bit hard of hearing, I couldn't quite get all of it, so about the end of the meeting that we had in Mr. Knapp's office he handed a letter to Jim Corgan and wanted to know if we had received the letter that they had sent to us and I said, "No." So, he had pulled a copy of the letter that he had sent to us [53] and wanted to know if they had seen anything and Mr. Corgan and Jim said, "No," because they had never corresponded with me.

Q. Tell us what was said.

A. Well, it has been quite a long time ago and I rather forget a lot of the conversation or anything at the time. When we got up to go out, we stood around in a group, Mr. Corgan, Rathbun and myself, ready to shake hands, and he was talking to Cap Corgan and he said, "Well," he says, "it looks like we are stuck for the wreckage." We said, "Good-bye" and walked out. To go into details, that has been too far gone. [54]

\* \* \* \* \*

### Cross-Examination

By Mr. Snow:

Q. You spoke about the Steinbach Iron Works

(Testimony of David E. Steinbach.)

being involved financially and owing two individuals in Tillamook. Who are those men?

A. Mr. Vickers, President of the First National Bank and Charlie Lamb.

Q. What was the aggregate amount you owed them?

A. How much money we owed them? [56]

Q. Yes. A. \$7000.

Q. That is, the two of them together?

A. Yes, \$3500 apiece.

Q. Is that evidenced by a promissory note?

A. It was, yes.

Q. Did you and your brother both sign those notes? A. Yes.

Q. Any other members of the family?

A. Well, I couldn't say, but I imagine that they did.

Q. You are not sure of it, though? A. No.

Q. In addition, the Steinbach Iron Works owed quite a lot of money on open account, didn't it?

A. I was not following that. My brother did that. I was running the shop. He took care of the books.

Q. You were not as familiar with the details of the Steinbach Iron Works as your brother?

A. Well, I was familiar, yes.

Q. You know how much they owed?

A. I know how much they owed, yes.

Q. How much did they owe?

A. Oh, about \$16,000.

Q. In addition to the \$7000? A. No. [57]



(Testimony of David E. Steinbach.)

Q. Including the \$7000?

A. \$7000, yes; including the \$7000. Yes, that was my understanding.

Q. The total debts were not \$29,000?

A. What is that?

Q. The total debts were not \$29,000?

A. No. No.

Q. That was the situation at the time the dredge was purchased from the Government, was it not?

A. Will you repeat that?

Q. Was that the situation at the time the dredge was purchased from the Government? Was that the situation in June, 1945?

A. Yes, I believe it was.

Mr. Snow: That is all.

Mr. Winslow: That will be all.

(Witness excused.) [58]

### HUGH CORGAN

was thereupon produced as a witness on behalf of the plaintiffs and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Winslow:

Q. What is your full name?

A. Hugh Corgan.

Q. Where do you reside now?

A. Rockaway.

Q. How long have you resided at Rockaway?



(Testimony of Hugh Corgan.)

A. Oh, since 1945—1944, in fact.

Q. Where did you reside before that?

A. Portland.

Q. How long have you resided around Portland?

A. Well, my home, that is, my lighting place, was Portland for the last thirty-five years.

Q. What has been your business, Mr. Corgan?

A. Dredging business and captain of towboats and passenger boats.

Q. How much experience have you had in that line of work?

A. Since I was twenty-one, on the Great Lakes and the ocean.

Q. How long ago was that?

A. Well, let's see. Since I was twenty-one I had papers and I am now sixty-eight, or sixty-eight my next birthday.

Q. Have you had any experience in towing?

A. Absolutely.

Q. How long have you known the Steinbachs, just generally?

A. Oh, I would say almost thirty years. I was at first at Yaquina. That was my first connection. That was about 1912.

Q. What did you have to do with the purchase of the Dredge Wishram in 1945?

A. I purchased her as agent for the Steinbachs.

Q. Did you have any financial interest in the purchase at all?      A. I had not ten cents.

(Testimony of Hugh Corgan.)

Q. Do you claim any financial interest in the dredge now?      A. I do not.

Q. Briefly, tell the Court how the purchase of this dredge, the Wishram, was handled by you?

A. Well, Mr. John Steinbach came to me first, knowing that I was an experienced dredge man, and he put a proposition up to me, asking me if I would be interested as a member of a company, providing he would give me a working interest in it until that part of it was paid and then I would become an owner.

Q. All of it?      A. A third.

Q. A third?      A. Yes.

Q. That wasn't quite an answer to my question. How was it [60] intended between you and the Government—

A. Well, I had been with the Government for a number of years and, knowing dredges, he asked me if I would handle the purchase of the dredge.

Q. Tell what you did in the matter of the purchase of the dredge from the Government?

A. I went and got the data on the dredge from the Government Engineers.

Q. Yes; go ahead.

A. Then I bought the dredge in—bid the dredge in with the Steinbachs' money and immediately handed over the letter that the Government gave—the Government does not give a deed to any of that property when you bid. They simply give you so many days to get the property away from the mooring, or wherever it is located.

(Testimony of Hugh Corgan.)

Q. When you got the letter from the Engineers, the letter which we have marked here as Plaintiffs' Exhibit No. 22, acknowledging receipt of the purchase price of the dredge and telling you to come and get it—in other words, that is the substance of the letter. Where did you get that letter?

A. I got it from the Engineers.

Q. Whereabouts? Here?

A. Yes. They were then located in the Pittock Block.

Q. Who was with you?

A. Well, I don't remember as anybody—I believe John was [61] with me and I handed him the letter at their office, not then—the next day—at Tillamook.

Q. You did not keep the letter yourself?

A. I didn't.

Q. After you got that letter, what did you do with reference to having the dredge insured?

A. Well, I went—first, I consulted with the Steinbachs and then I went to Knapp and Rathbun whom I had done business with for years, and I was told that Mr. Banks would have to handle it because it was in his territory.

\* \* \* \* \*

Q. Who is Mr. Banks?

A. He is with Kruse & Banks Shipyards.

Q. What do you call it?

A. Kruse & Banks at Marshfield.

Q. Was he connected with the insurance company in any way?

(Testimony of Hugh Corgan.)

A. Yes, he is their representative at Coos Bay.

Q. Did Mr. Knapp or Mr. Rathbun tell you that?      A. Yes, both of them.

Q. What discussion did you have with them in reference to the amount of insurance?

A. They wanted—they insisted on insurance for two or three times what I wanted. On account of the Steinbachs, I knew that they could not afford to pay any such premium.

Q. Yes.

A. We dickered back and forth and they had to get in touch [62] with 'Frisco and it took, I guess, a couple of weeks or so, before we came to an understanding with them.

Q. What was the subject of the discussion? Did you want to insure it for more than \$12,500?

A. No, they wanted to insure for the replacement value.

Q. What did they say that was, approximately?

A. I think it was in the neighborhood of \$30,000.

Q. When the insurance policy was finally agreed upon, do you remember who was present?

A. Yes.

Q. Who?      A. John Steinbach and myself.

Q. Was there any discussion at that time? Was there any discussion between John Steinbach and—Who was representing the insurance company?

A. Mr. Knapp.

Q. Mr. Knapp?      A. Yes.

Q. Was there any discussion at that time as to

(Testimony of Hugh Corgan.)

how much insurance should be issued and in whose names?

A. Well, John said the Steinbach women, Mrs. Dave Steinbach and his wife, Frances.

Q. You did not claim to own any interest in it then, did you? A. No. [63]

Q. And don't now? A. No.

Q. Did Mr. Steinbach say anything more to Mr. Knapp as to why the policy was being issued in the names of the ladies?

A. Yes, he did. In regard to the condition of the Steinbach Iron Works at that time, he said he did not want it connected in any way with the Iron Works.

Q. That is, the ownership of the dredge?

A. Yes, the ownership of the dredge.

The Court: Have him tell whether the insurance company knew the circumstances as to how it was being purchased, who paid for it and the letter from the Government. Did they know about that?

Q. (By Mr. Winslow): Were the insurance company representatives ever shown this letter that you got from the U. S. Engineers?

A. I don't know. I know that Steinbach had it in his pocket because I told him to be sure and have it when we went in.

Q. Did you ever tell Knapp or Rathbun that Steinbachs owned it, or that you had any interest in it? Did you ever tell them whether you were just representing Steinbach or representing yourself?

The Court: Did the insurance company know

(Testimony of Hugh Corgan.)

that it had just been bought from the Government?

A. Yes, they did.

Q. Did they know who bought it, how it had been done, or [64] what had been paid for it?

A. I don't know as to that, whether they knew.

Q. Did they know how it had been bought?

A. That I don't know. They most surely knew me well enough to know I didn't have it at the time.

Q. (By Mr. Winslow): How is that, again?

A. They knew me long enough to know I didn't have it.

Q. Do you recall during these negotiations whether or not you made any suggestion to the insurance company that you were acting as agent of the Steinbachs?

A. What is that question?

Q. Do you recall at any time during these negotiations that you made any suggestion to Mr. Knapp that you were acting as agent of the Steinbachs?

A. Well, I wouldn't say that I did, see?

The Court: What interest did they think you had in it? Where did they think you came in on the deal?

A. Well, they knew the Steinbachs was with me almost from the time that we went in.

Q. Did you tell them you had planned to go back to Tillamook, you three, and go into business together?

A. Well, I wouldn't say, but I know that Rathbun knew. We had talked many times together and



(Testimony of Hugh Corgan.)

we had been friends for many years. I wouldn't say positively, but I am sure that I did him. [65]

Q. (By Mr. Winslow): You were present when Mr. Steinbach told him to write the insurance in the ladies' names? A. Absolutely.

Q. You did not object to that? A. No.

Q. And do you now? A. No. [66]

\* \* \* \* \*

Q. What time was it the day before you approached Mr. Berg to make this tow?

A. The evening before.

Q. How about the towline? What was said about the towline? A. Well, Ole Johnson—

Q. Did Mr. Berg have any towlines?

A. No, he had no towlines, so I figured that any towline that the Coast Guard would recommend was good enough for me, and, so, Ole Johnson—he was just retired from the Coast Guard—went in and looked into that and made arrangements for a towline, and he pronounced the towline “A” Number 1, and it had just been taken off a Coast Guard boat.

Mr. Snow: I move to strike out what Ole Johnson said. That is hearsay, I think they should have Ole Johnson here.

The Court: Who was Johnson?

Mr. Winslow: He is a man who had been with the Coast Guard.

The Court: Was he the extra man?

A. Oh, no.

The Court: The answer may stand.



(Testimony of Hugh Corgan.)

Q. (By Mr. Winslow): All right. Where was that towline [72] delivered to Berg?

A. The towline was delivered to Berg at the Coast Guard dock, at the mooring of the boat, the Coast Guard boat.

Q. You were not, yourself, present when that was actually done?

A. No, I sent my son, and Orville Boster and a Coast Guard fellow—I don't know his name.

(Recess.)

Q. You say this was the day before you got the towline, the day before?

A. The evening before, yes.

Q. Were you present at the dredge, then, the next morning?      A. Yes.

Q. Just where was the dredge located?

A. At Dave Chambers' mooring at Wheeler.

Q. At Wheeler, Oregon?      A. Yes.

Q. What time, approximately, did the tugboat get there?

A. Oh, around 9:00 o'clock, I think, in the morning.

Q. What did you do then? What was done there, rather, in regard to getting the towage on its way?

A. She was all ready for the boat to come in, which she did, and hook onto her and connect her towline to the bridle. That was all ready.

Q. You saw the towline there, didn't you? [73]

A. Yes.

Q. You did not, yourself, examine that particular towline?      A. I didn't

(Testimony of Hugh Corgan.)

Q. Who composed the crew of Mr. Berg.

A. Well, I was told it was him and his brother.

Q. Did someone else go along with them on the trip?

A. Yes.

Q. Who was that?

A. Jim Brakeman, as a passenger.

Q. What is that?

A. As a passenger.

Q. What, if any arrangement, had you made prior to that time about having the Coast Guard to stand by?

A. I requested the Coast Guard to stand by in case of any mishap, or, you know, for safety.

Q. What did the Coast Guard do between bars?

A. Stood by, as far as I could see.

Q. Did you watch them?

A. Yes.

Q. How far away were you?

A. Well, I was standing down at the jetty and watched them cross the bar, and then I followed them right on up the coast to Tillamook, that is, to the whistling buoy.

Q. Where was the Coast Guard during that time?

A. Just close to the towboat and dredge [74]

Q. What was the condition of the weather that day, as you observed it?

A. Beautiful.

Q. I suppose that means the sea——

A. The sea was calm; no wind to speak of.

Q. Captain Corgan, in your experience, did you believe the Julia D was a competent boat to do that tow?

A. I had all the confidence in the world——

(Testimony of Hugh Corgan.)

Mr. Snow: I object to the question, your Honor. The question here is not whether the Julia D was a competent boat or not. The question is whether he represented that the Umpqua Chief would do the towing; and, also, the question is whether he disclosed to the insurance company that the Julia D was doing the towing. It has nothing to do with competence at all. If the Julia D was the best boat in the world, still there would be a failure to disclose it and misrepresentation.

The Court: He said he did disclose it, that he was going to get the Faymar or some boat of that same type.

Mr. Snow: Nevertheless, competence has nothing to do with it.

The Court: It is admitted for whatever it is worth.

Q. (By Mr. Winslow): Did you ever live at Garibaldi?      A. Never.

Q. Did you ever get any mail there?

A. Never. [75]

Q. Who is J. H. Corgan?      A. My son.

Q. Your name is Hugh Corgan?      A. Yes.

Q. Mr. Corgan, had you known that the insurance company was insisting upon the tow being made by the Umpqua Chief——      A. Never.

Q. I say, had you known. Just wait.

A. I hadn't.

Q. I know. Had you known that——

A. Oh, excuse me.

Q. Let me finish my question.      A. Yes.

(Testimony of Hugh Corgan.)

Q. Had you known that the insurance company was insisting that the tow be made from Nehalem Bay to Tillamook Bay by the Umpqua Chief, would you have it towed by the Julia D? A. Never.

Q. How long does it take you to get mail from Portland to Rockaway? If mailed in Portland to-day, when would you get it in Rockaway?

A. Well, sometimes it gets there the next morning and other times it is a little late, you know.

Q. You get mail there, how many times a day?

A. Twice.

Q. Now, Mr. Corgan, we are all agreed that the dredge went [76] on the rocks, and we are agreed it was the 1st of November, 1945. A. Yes.

Q. What did you do then? Did you come to Portland very soon, then?

A. The next morning—of course, it was along about 8:00 o'clock, I think, or thereabouts, when the dredge floundered, and I went—of course, it was dark, and I went over to Rockaway and one of the Coast Guard, or somebody, told me that the dredge was unsafe at Garibaldi, so I said to my son, I said "for God's sake, let's beat it."

Q. I think we are all agreed it was a total loss.

A. Yes.

Q. What I want to lead up to is this: Did you soon come to Portland, Oregon, to the insurance company? A. Yes.

Q. Who came with you?

A. Dave Steinbach and my son.

Q. Your son, J. H. Corgan? A. Yes.

(Testimony of Hugh Corgan.)

Q. Let me ask you this question: Did your son have any part in the negotiations for the insurance, the extended insurance, or any part of that, with the insurance company? Did he take part in any of those negotiations prior to the loss?

A. No, sir.

Q. When you went to the insurance company with Mr. Dave Steinbach, tell the Court just what took place there, as nearly as you can. Whom did you meet? What was done?

A. Well, we went into the outer office and we were shown into Knapp's office, and there was Mr. Knapp and Emmett Rathbun and Dave Steinbach and Jim and myself.

Q. All right.

A. So, finally, Mr. Knapp said "Did you get my letter?" I said "Yes" and he said "How come you didn't get the Umpqua Chief?" I said "What do you mean, get the Umpqua Chief?" and, so, he said "Didn't you get my letter?" I said "I guess I don't know what letter you are referring to." "Well" he said "we posted it to you about the Umpqua Chief." I said "If you did, it never arrived," so he goes out and gets a copy of the letter, and I read it—my eyes were okeh then. I read the letter and I said "You are crazy. We never got it. I never got any such a letter," and I looked at the name and here was "Garibaldi" on top.

Q. What was the rest of the conversation then?

A. Well, he went out, then, in the outer office and talked to one of the girls and then he came

(Testimony of Hugh Corgan.)

back, and he admitted that it was sent to Garibaldi. There wasn't much more talked about. I got up and left, and Mr. Rathbun shook hands with me and said—on the way out, he said "Well, Cap, it looks as if we are hooked," and I said nothing.

Q. This letter—you say you could read then all right? [78] A. Yes.

Q. What is the matter with your eyes now?

A. Well, it was on that evening that my eyes—this one eye is all I had sight in. The next morning, when I got up, I was nearly blind.

Q. You have a pretty hard job reading now?

A. Yes.

Q. If I could read the letter to you now that Mr. Knapp showed you, would you recognize it?

A. Yes, sir,

Q. It reads: "Captain J. H. Corgan, General Delivery, Garibaldi, Oregon. Dear Capt. Corgan: In accordance with your recent instructions, we are sending you herewith endorsement applying to Universal Policy PC 50295 extending it to cover one trip of the Dredge 'Wishram' while being towed from Nehalem Bay to Tillamook by the tug 'Umpqua Chief.'

"Surveyor Rathbun has approved this tow only if made during calm weather. Under the circumstances, I trust you will be vary careful in picking the weather for the trip."

Is that the letter? A. Yes.

Q. Is that the letter that he pulled from his file and that you have been telling us about?



(Testimony of Hugh Corgan.)

A. Yes, that is the letter that came to Garibaldi.

Q. And it was a copy of that letter that he showed you in his office? A. Yes.

Q. That is what I wanted to identify.

A. Yes.

Q. I will ask you this: At the time of this discussion which you have referred to, in his office after the loss, was that the first time that you ever heard anything about this tow being made by the Umpqua Chief? A. Yes, sir.

Mr. Winslow: You may cross-examine.

### Cross-Examination

By Mr. Snow:

Q. Was your first approach to Mr. Knapp and Mr. Rathbun about the insurance of the dredge at the time of your trip to Portland with Mr. and Mrs. John Steinbach? That is, in reference to the Coos Bay tow, the original insurance policy on the dredge? I am talking about June of 1945.

A. Yes.

Q. You and Mr. and Mrs. Steinbach went into Mr. Knapp's office, I understand?

A. Mr. Steinbach and myself.

Q. Mrs. Steinbach did not go along?

A. No. [80]

Q. Now, how long was that after—if it was after—you got the letter from the Government, from the Engineers' Department, transferring the dredge to you?



(Testimony of Hugh Corgan.)

A. Well, I wouldn't be sure that I didn't get it before.

Q. You mean, you may have got the letter before you went to Knapp's office?

A. Yes, before I applied for any insurance.

Q. That is what I thought. You think you did get the letter before you went in to apply for insurance?

A. Yes. I don't think I would have applied for insurance until we were assured that we or Steinbachs had title, or, that is——

Q. So, you think after you got the letter from the Government you applied for the insurance, do you?

A. I think so, yes.

Q. This application was not made on the telephone, but made in person, was it?

A. It was made in person.

Q. You went into Mr. Knapp's office and talked that over?

A. Yes.

Q. When you got the letter from the Engineers, transferring the title, or transferring the dredge, you handed that letter, you say, to Mr. John Steinbach?

A. Yes.

Q. When you went into Mr. Knapp's, you had considerable [81] discussion about the value at which the dredge was to be insured, did you not?

A. Yes, sir.

Q. It took a couple of weeks to work out that valuation?

A. I would say that, yes.

Q. You say Knapp wanted you to insure it for its replacement value?

A. Yes.

(Testimony of Hugh Corgan.)

Q. \$30,000?

A. I wouldn't say exactly that it was \$30,000, but it was outlandish.

Q. Who named that figure of \$30,000?

A. Right in Knapp's office—Knapp himself.

Q. Did Mr. Knapp, in that same conversation, say that, since this was Mr. Robert Bank's jurisdiction down in Coos Bay, he would have to make a survey? A. Yes.

Q. You think at the same time Mr. Knapp expressed the opinion that the replacement value of the dredge was \$30,000? A. Yes.

Q. Did you ask Mr. Knapp what made him think that the dredge was worth \$30,000?

A. Well, no, because I knew it was worth that.

Q. You knew it was? A. Yes. [82]

Q. I thought you considered the figure outlandish in describing it.

A. No, outlandish according to the price and money that we would have to pay for a \$30,000 policy. We were not looking to sell the dredge.

Q. That figure of \$30,000 was your own idea of the value of the dredge?

A. The actual cost to the Government was \$49,000.

Q. I am not asking you about the cost to the Government. Did the figure of \$30,000 come out of your own imagination, as to the value of the dredge?

A. Out of my knowledge of those.

Q. Then, Mr. Knapp did not express himself as

(Testimony of Hugh Corgan.)

being of the opinion that the dredge was worth \$30,000, did he?

A. He said that the insurance company insisted on insuring for practically the full valuation.

Q. Didn't he explain to you at that time that the insurance company took two values, the replacement value and the depreciated value, and averaged them to get at the proper insurable value?

A. I didn't go into that with him. He told me he would take it up with the 'Frisco office and let me know, and I told him that if we had to—if they insisted, we would carry our own insurance.

Q. I would like to know how Mr. Knapp—whether Mr. Knapp [83] got it through you, or whether it was someone else's idea that the dredge was worth \$30,000?

A. Well, I presume from his knowledge of floating equipment.

Q. Do you think Mr. Knapp ever saw that dredge before that?

A. He had saw drawings of it and got the information, undoubtedly, from the Government office, which anybody could get.

Q. Eventually, the insurable value of the dredge was fixed at \$12,500?      A. Yes.

Q. That was based on Mr. Banks' appraisal?

A. Well, there were a number of conversations through Knapp—with Knapp and Banks, and so on, and they had arrived at that between themselves.

Q. You recall Mr. Knapp asking in whose name the insurance policy was to be issued?

(Testimony of Hugh Corgan.)

A. Yes.

Q. Did you then reply, in the names of the ladies?  
A. Mr. Steinbach did.

Q. Mr. Steinbach did? A. Yes.

Q. Do you recall Mr. Knapp saying "How is that?" and asking for an explanation of that?

A. Yes, I believe he did.

Q. Did you then tell Knapp that the ladies had bought the dredge from the Government? [84]

A. Mr. Steinbach had this letter from the Government in his pocket and it was Mr. Steinbach who told Mr. Knapp to make the policy out in the ladies' names, owing to the fact that he did not want it to be connected with the Iron Works.

Q. Do you recall definitely now that Mr. Steinbach said anything about connecting the dredge with the Iron Works in Mr. Knapp's office?

A. Yes.

Q. He had told you that previously, that he didn't want it connected with the Iron Works, hadn't he?  
A. Oh, yes.

Q. And you think that he also said, when he was in Mr. Knapp's office, that he did not want it connected with the Iron Works?

A. He told Knapp to make the policy out to the ladies.

Q. That is all he told him?

A. No, it wasn't. He told Knapp at that time his reasons.

Q. And his reason was that he did not want it connected with the Iron Works?

(Testimony of Hugh Corgan.)

A. Yes, and that they had advanced the money.

Q. Well, did Mr. Steinbach at that time go on and tell Mr. Knapp all about the arrangement of going into business together, or anything about it?

A. No, I don't think he did.

Q. He didn't say that you and he and Dave Steinbach were going [85] to divide the profits three ways, did he?

A. No, I don't think so.

Q. Did he say anything about the proposed organization of the Coast Dredge & Construction, Ltd.?

A. No, he didn't. We were in there on business, not social.

Q. I am talking about in Mr. Knapp's office.

A. Yes. That is when I mean. [86]

\* \* \* \* \*

Q. On the towage to Nehalem Bay, did the Umpqua Chief furnish the hawser?

A. Yes.

Q. It was ample, was it?

A. Yes.

Q. Do you know what size it was?

A. Yes, I would say it was six-inch.

Q. Who furnished the bridle?

A. They did.

Q. The Umpqua Chief?

A. Yes, absolutely.

Q. Was the bridle steel?

A. Yes. [88]

\* \* \* \* \*

Q. You recall the taking of your deposition in Portland, do you not?

A. I think so, yes.

Q. Well, don't you remember?

A. Well, I remember, yes, that it was taken.

(Testimony of Hugh Corgan.)

Q. Do you recall meeting in a room in the Pacific Building? A. Yes.

Q. With your two attorneys, Mr. Phillips and Mr. Winslow? A. Yes.

Q. And do you recall my being present, and a reporter? A. Yes.

Q. You testified at that time, did you not, that you made your arrangements with Otto Berg two weeks before the tow? A. I did. I said that.

Q. Now, you say it is a mistake?

A. I just say this. You know, it had been so long since the floundering of the dredge and there was so many things come up that afterwards I did think that I had made a mistake in making that statement.

Q. Didn't you testify at that time you made this arrangement [95] with Otto Berg two weeks before the towage, and that you had to wait three weeks on account of the weather?

A. Yes, I say—that is what I say. It was the night before the tow was made.

Q. Now, you say you made that arrangement with Berg the night before the tow took place?

A. Yes, the night before and the night before the towline was put on.

Q. Then, you did not wait at all for the weather, did you? A. Just the next morning.

Q. I will ask you if you testified to this effect at the time of the taking of your deposition in Portland——

Mr. Winslow: Where are you reading from?



(Testimony of Hugh Corgan.)

Mr. Snow: Reading from page 30, the bottom of page 30.

Q. "Question: Did you mention the Julia D to Mr. Rathbun when he came down to survey the dredge?

"Answer: I would have to look that up to see what time—I have the time when Mr. Rathbun came down.

"Question: What would you look it up in?

"Answer: Well, in my check book, and dates down there at Rockaway.

"Question: What dates?

"Answer: That I was there at Rockaway waiting for the weather.

"Question: Did you wait quite a long time for the weather to be right after you made the arrangement with Otto Berg?

"Answer: I believe about three weeks." [96]

Did you so testify at that time? A. Did I?

Q. Did you testify as I have just read at that time?

A. Yes, I probably did, but I did wait three weeks before the weather was fit or I was fit to have the dredge go out.

Q. During those three weeks, what efforts did you make to find a towboat?

A. We were negotiating for the Faymar at that time.

Q. You had no negotiations with Otto Berg?

A. No, sir.

(Testimony of Hugh Corgan.)

Q. Until the night before the towage?

A. Until the night before the tow. [97]

\* \* \* \* \*

Q. Now, when was it that you first talked with Otto Berg about this towage?

A. The first time I talked to him or ever met him was the night before the tow.

Q. When was it that Jim first talked with him?

A. Oh, I guess Jim has.

Q. What is that?

A. I don't know when he first talked with him.

Q. I mean about this particular tow. These boys had been acquainted before, hadn't they?

A. Yes.

Q. When was it that Jim first talked to him about the tow?

A. Well, I wouldn't say. I don't know.

Q. You testified a while ago that you first engaged Otto Berg only the night before the towage to make the tow. Do you mean to say or to exclude the possibility of Jim having engaged him before that?

A. Jim had no authority to engage him.

Q. You were the man who engaged Otto Berg to make the tow, were you? [102]

A. I was.

Q. And that was the night before?

A. The night before.

Q. But you do not know when Jim first approached him about this?

A. Jim spoke to me some time before that—I

(Testimony of Hugh Corgan.)

don't know how long it was—just a short time—and told me about this boat.

Q. When was it you approached the Coast Guard about borrowing the hawser? A. I didn't.

Q. You didn't? A. I didn't. Johnson.

Q. When was it you approached Johnson? That is Ole Johnson? A. Yes.

Q. When was it you got in touch with him about borrowing this hawser?

A. Well, it was several days before that.

Q. Several days before? A. Yes.

Q. Where were you and Otto Berg, Jr., when you made the deal to do the towing?

A. Down in front of his house at Garibaldi, where he lived, the old Coast Guard station. [103]

Q. He lived back of the Coast Guard station, did he? A. Yes.

Q. Up on the hill? A. No, down.

Q. Down the hill? A. The old station.

Q. Below the station?

A. No, the old one, the old Coast Guard station.

Q. You were at his house, were you?

A. No.

Q. Where were you standing outside?

A. In my car.

Q. The coast—The road runs past the Coast Guard station, doesn't it?

A. The present one?

Q. Yes. A. Yes.

Q. That is where your car was parked, on the highway?

(Testimony of Hugh Corgan.)

A. No. It was down at the old one.

Q. What time of night was that?

A. Oh, it was in the evening.

Q. Was it after dinner?

A. I don't know whether I had my dinner or not.

Q. Was it dark?           A. Yes. [104]

Q. Did Otto Berg give you a figure of \$150 plus \$25 for another man?           A. Yes.

Q. Did he tell you then he did not have any hawser or bridle?           A. Yes, he did.

Q. So, then, you got the bridle from the Coast Guard?

A. I didn't get the bridle from the Coast Guard.

Q. So, then, you got the hawser from the Coast Guard?           A. I didn't get it.

Q. You mean to say Johnson got it, is that it?

A. Johnson made the arrangements, and my son, Orville Boster, and one of the Coast Guard boys went down—I drove down as far as the entrance to the ramp that goes out there, and I stayed in the car, owing to the fact that it was raining, and my son and Orville Boster and this Coast Guard fellow went out and played the line out the window to Otto Berg. That is hearsay with me because I wasn't there.

Q. What time of night was that?

A. Oh, I think it was along about, maybe 2:00 or 3:00.

Q. Was that before or after you made the deal with Otto Berg to do the towage?

(Testimony of Hugh Corgan.)

A. Well, it was after because he towed her the next day.

Q. You said you were uncertain—the time at which you made the deal with Otto Berg.

A. It was the day before the tow. [105]

Q. It was the night before the tow, was it?

A. Yes, or the day before.

Q. Let's go back over that again. What day of the month did you make your deal with Otto Berg?

A. Well, I would say it was either the 30th or the 31st of October.

Q. The towage took place on the 1st of November, didn't it?      A. Yes.

Q. You testified heretofore, if I remember correctly, on direct that you made the deal on towing the day before the towage took place.      A. Yes.

Q. Well, that would be the 31st, the 31st of October, wouldn't it?      A. Well, the 31st.

Q. Now, do you want to change that to the 30th?

A. No.

Q. You are satisfied to keep it the 31st, are you?

A. Yes.

Q. That took place at night? That deal took place at night, when it was dark?

A. Well, I don't—I wouldn't say positively about that, because we were doing so much running around and the circumstances under which we went down there. Jim went into the house and we parked there—that is, my son Jim. We [106] parked outside the house and Jim went in and got Berg to come out and talk to me.

(Testimony of Hugh Corgan.)

Q. Who made the deal with Johnson?

A. He simply told me that the Coast Guard had a bunch of good lines and that he was sure that he could get one from them. So, I said "Go to it." He came back and said that we could get it, so that was the extent of the deal.

Q. You spoke of this hawser that you borrowed being highly recommended by the Coast Guard, the United States Coast Guard. Who recommended the hawser on the part of the Coast Guard? Ole Johnson?

A. Well, Johnson said it was, but I don't think I said that it was highly recommended. I said any hawser that would take care of a Coast Guard boat would take care of a small boat like the Julia D.

Q. I think you said any hawser recommended by the Coast Guard was good enough for you.

A. Recommended, yes.

Q. Ole was the man who recommended the hawser to you? A. Yes.

Q. Anybody else on the part of the Coast Guard?

A. No, sir.

Q. Who was at the head, or the commanding officer, or petty officer, as the case might be, of the Coast Guard station at Garibaldi at the time you got this hawser? A. Mr. Paris.

Q. Did you ever ask Mr. Paris for the loan of this hawser? A. Not as I remember.

Q. Did Mr. Paris personally tell you that you could use the hawser?



(Testimony of Hugh Corgan.)

A. Not to my recollection.

Q. Did Mr. Paris recommend the hawser to you?

Mr. Winslow: He has testified he didn't make the deal with the Coast Guard at all.

Mr. Phillips: He testified he did not have anything to do with the Coast Guard.

Q. (By Mr. Snow): Did Mr. Paris recommend that hawser to you? A. No.

Q. Did you ever——

Mr. Phillips: Let the witness finish his answer.

A. Ole Johnson was the man.

Q. (By Mr. Snow): Did you ever have any conversation at all with Mr. Paris about this hawser?

A. Not as I remember.

Q. To your knowledge, did Mr. Paris have any knowledge that the hawser was being taken out of the Coast Guard station and used for this towage?

A. I wouldn't say that he did.

Q. You never saw the hawser yourself, did you?

A. No.

Q. You were the general manager of the dredge, weren't you? A. Yes.

Q. You knew that a hawser was going to be used on this towage, didn't you? A. Yes.

Q. But you did not inspect that hawser before it was used? A. No.

Q. You just took Ole Johnson's word that it was a good hawser?

A. He was a tugboat man. He handled every inch of that line when it went over the boat. There-

(Testimony of Hugh Corgan.)

fore, if he was a towboat man he would know whether the hawser with a fit line to take.

Q. You did not, and you do not, feel you had any responsibility as to the strength of that hawser or thickness of the hawser for that voyage?

A. Not after the tugboat accepted it. [111]

Q. Did you tell Mr. Rathbun, or anyone else on the part of the insurance company, that this towage was to be undertaken with a hawser borrowed from the Coast Guard?

A. I don't think I did, no. [112]

\* \* \* \* \*

### JAMES H. CORGAN

produced as a witness on behalf of Plaintiffs, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Winslow:

Q. Your name is James H. Corgan?

A. Yes, sir.

Q. Where do you reside?

A. Rockaway, Oregon.

Q. How long have you resided there?

A. Since '45.

Q. You are a son of Hugh Corgan who was just on the witness stand? A. Yes, sir.

Q. What is your business, Mr. Corgan?

A. Well, I have been working on construction, general construction.

(Testimony of James H. Corgan.)

Q. In what capacity?

A. Oh, foreman.

Q. Were you acquainted with the Dredge Wishram?

A. Yes, sir.

Q. Did you work on the dredge at Nehalem Bay?

A. Yes.

Q. Do you recall when the matter came up of towing the [115] dredge from Nehalem Bay to Tillamook Bay? You recall about that matter coming up?

A. Yes, I do. [116]

\* \* \* \* \*

Q. When were negotiations with Otto Berg commenced, if you know?

A. Negotiations were made the day before, on the 31st of October, just before lunch.

Q. How is that?

A. The 31st of October.

Q. You say, just before lunch?

A. Yes, the day before.

Q. Who made that contact with Otto Berg?

A. Well, I drove down to his house, in front of his house, across the railroad track at Barview. I went to the door and he came out from his house, out to the car, and talked with my father.

Q. It was not very dark then?

A. No, it really wasn't dark.

Q. Well, just very briefly, did you make the deal there?

A. That is when we made the arrangement, and Mr. Berg said he would do it for the price he said.

Q. What price was stated?

(Testimony of James H. Corgan.)

A. Well, it was \$150, and then, as I remember, his brother was going with him and we had to pay his brother. [118]

Q. What was that extra price?

A. \$25. It was \$175—that was the price, and he would do the job when the weather was fit, but we had to secure a line.

Q. He told you that he had no towline?

A. Yes. I helped him find a line or secure one that would——

Q. All right. Then, what did you do in reference to the securing of a towline?

A. Well, I believe, as near as I can remember, why, we went to Garibaldi.

Mr. Snow: May I suggest, your Honor, that the witness say “I.” He is speaking of “we.”

Q. (By Mr. Winslow): Whom do you mean by “we?”

A. My father and I and Mr. Boster was in the car and we went over—is that right?

Q. Yes.

A. ——— from there to Garibaldi and talked to Mr. Johnson, Ole Johnson, and found that he could maybe obtain a line from the Coast Guard, which he did, and then——

Q. Did you go with him to see anybody connected with the Coast Guard? A. No.

Q. Who went with him?

A. Nobody. He went alone.

Q. You think he went alone?

A. Yes, sir.

(Testimony of James H. Corgan.)

Q. What did you do then about selecting the towline you were [119] to get?

A. Well, when Johnson said it was all right, why, he and I and Mr. Boster went out to the boat house.

Q. Was one of the Coast Guard boys with you?

A. No, we went out there ourselves and inspected the lines that they had and chose the one that was recommended by Mr. Johnson as being the longest and best of all lines.

Q. Where was that towline located in the boat house?

A. It was at the top of the stairs in the loft.

Q. You had seen towlines before, hadn't you?

A. Yes.

Q. How did that towline look to you?

A. Looked pretty good.

Q. Do you remember about what size it was?

A. Well, it was between four and six. Between four and six—four and six inch—it depends on how you measure it.

Q. What would it be, ordinarily, in diameter?

A. It would be about a three-inch line if you go through the center of it.

Q. Three-inch through the center, and nearly four or five in circumference?

A. Yes, in circumference, that is right.

Q. What was done, then, with the line?

A. We went back and told Mr. Berg that we had the line, that we could get the line, so he came down with his boat. I believe [120] it was about 3:00 o'clock he came into the Coast Guard dock, and we played it out the window to him. One Coast Guard

(Testimony of James H. Corgan.)

boy came with us to unlock the shed, and Mr. Bos-ter and I played the line out the window from the upstairs.

Q. Was Mr. Johnson present when the line was loaded?

A. No, he was not present. We put the line out the window and played it out to Mr. Berg and he coiled it on the after deck of his boat.

Q. How did Mr. Berg play it on his boat?

A. Well, it was played over the—He took it right alongside the ramp. There is a ramp right there, right in the water, at which they dock the Coast Guard boats.

Q. What do you mean by “played it out?”

A. Took the line out.

Q. In other words, I am trying to develop whether or not he was there alone in doing it.

A. I believe he was. I think he handled every piece of it.

Q. How long was that line, approximately?

A. I would say between 500 and 600 feet.

Q. That was the day before the tow was begun?

A. Yes. [121]

\* \* \* \* \*

Mr. Winslow: You may cross-examine.

#### Cross-Examination

By Mr. Snow:

\* \* \* \* \*

Q. Having in mind that the disaster occurred



(Testimony of James H. Corgan.)

on November 1st, I wish you would state the date when you, yourself, first approached Mr. Berg about this towage?

A. It was about 11:00 o'clock, I would say about 11:00 o'clock. It was just before lunch on the 31st of October.

Q. It was the day before the towage?

A. Yes, sir.

Q. Was your father with you at that time?

A. Yes, sir.

Q. You had previous acquaintance with Mr. Berg?

A. Yes, sir.

Q. You had been fishing with him?

A. Yes, I had gone out once.

Q. Where did this conversation take place?

A. The conversation took place in his front yard, or in front of his house, in his front yard.

Q. He lives at Bay City?

A. At Barview.

Q. Barview is on Tillamook Bay, is it?

A. Yes, it is right down near the entrance.

Q. Were you present during that entire talk?

A. Yes, sir.

Q. Who did the talking, you or your father?

A. My father and I both talked to him. I talked to him, but, as far as any negotiations, it was done through my father.

Q. At that time, Otto Berg, Jr., asked for \$150 for the towage, plus \$25 for a man, did he?

A. Yes, sir.

Q. Did your father enter into a verbal contract with him? Did your father agree to that?

(Testimony of James H. Corgan.)

A. Yes, he did.

Q. At that time, had you taken any steps to get any hawser for that boat? [131]

A. No, I had taken no steps at all.

Q. Did your father then tell Otto Berg, Jr., that he could get a hawser?

A. We told him we would try to make negotiations for the loan of one.

Q. Did you already have a bridle?

A. Yes, sir.

Q. Where did you get the bridle?

A. The bridle was made up by ourselves, and passed on by Mr. Rathbun.

Q. When did you make up the bridle?

A. Made up the bridle approximately two weeks before.

Q. Before the towage? A. Yes, sir.

Q. How long did the talk with Otto Berg, Jr., take?

A. Oh, it might have taken half or three-quarters of an hour, I am not certain.

Q. Was that the only talk that your father had with Otto Berg, Jr., to your knowledge, prior to their tow? A. Yes, sir.

Q. Just the one?

A. That is the only one, yes, sir.

Q. Was any understanding had at the time of that talk as to when Berg would undertake the towage?

A. Mr. Berg was to use his own judgment as to when he would [132] do the job.

(Testimony of James H. Corgan.)

Q. At the conclusion of that talk, where did you and your father go?

A. Well, I believe we ate lunch and then went back down to Garibaldi.

Q. Did you immediately contact Ole Johnson with the idea of getting this hawser?

A. I approached him and asked him if he knew where we could obtain a hawser.

Q. Where was Johnson at that time?

A. Where was Johnson at that time? I am not sure. I don't know whether it was at his home or on the street where we saw Ole Johnson.

Q. Was that right after lunch?

A. Right after lunch, yes.

Q. On the 31st? A. Yes.

Q. Ole Johnson had recently been discharged from the Coast Guard, has he?

A. A medical discharge, yes, sir.

Q. He was no longer a member of that outfit?

A. No, sir.

Q. Where did he live, Garibaldi?

A. He lives at Garibaldi, Oregon, yes.

Q. You do not remember where it was you talked to him? [133]

A. No, sir. It was in Garibaldi, Oregon, that we talked to him.

Q. Did Johnson say the Coast Guard had some hawsers?

A. He said they possibly would have, yes, sir.

Q. Did he say where they were?

A. No, he didn't say where they were.

(Testimony of James H. Corgan.)

Q. What time was it you actually went to the Coast Guard station to get that hawser?

A. Might I ask: Do you mean when we put it aboard the boat?

Q. Yes.

A. That was about 3:00 or 3:30 in the afternoon; we went to the boat house; we never went to the station.

Q. I understand. The boat house stands on piling down in the bay, doesn't it?

A. Yes, sir.

Q. The boat house is a two-story structure, is it?

A. Yes, sir.

Q. With a ramp leading from the ground floor of the boat house, or the bottom floor of the boat house, down to the water?

A. No—Well, yes, there is.

Q. They haul Coast Guard boats up that ramp to the bottom floor of the boat house?

A. Yes.

Q. That is where they house their boats?

A. Yes.

Q. When taken out of the water? [134]

A. Yes.

Q. After you left Johnson, when did you next see him, after your talk after lunch?

A. I really couldn't say.

Q. Johnson left you to see what he could do about getting a Coast Guard hawser, did he?

A. Yes, sir.

(Testimony of James H. Corgan.)

Q. Did you make an appointment to see him again later than that, later than afternoon?

A. I believe we—He rode up in my car. He rode up to the Coast Guard station and went in. I believe that is the way it was, and he told us afterwards—we never left him until he had gone in. He went in there to the Coast Guard station, came out and he and I and Mr. Boster went down to the boat house and inspected the lines.

Q. That all took place in a short time?

A. At one time, yes, sir.

Q. By "Coast Guard station," you mean the building up on the bank?

A. Yes, the house up on top.

Q. Above the highway?                      A. Yes.

Q. Then, you went down to the Coast Guard boat house that stands on piling in the water?

A. Yes. [135]

Q. That is where you got the hawser?

A. Yes.

Q. You and Boster and Berg participated in getting that hawser?

A. Yes. I believe—Yes, there was one Coast Guard boy went up to unlock the boat house.

Q. Was that Coast Guard boy Johnson?

A. No, sir.

Q. Do you know the name of that Coast Guard boy?                      A. No, I have no knowledge.

Q. He was not the head of the station, was he?

A. No.

(Testimony of James H. Corgan.)

Q. Are you acquainted with Boatswain Paris of the Coast Guard Station?      A. Slightly, yes.

Q. He was there in command of things, or in command, wasn't he?

A. I understand he was in command.

Q. He did not expressly give you permission to take the hawser?

A. Nobody ever gave us permission, no.

Q. Nobody at all gave you permission?

A. That is right.

Q. When the Coast Guard boy unlocked the door of the boat house, what did Johnson do?

A. Johnson wasn't there at all.

Q. Johnson did not go down there with you at all? [136]

A. He went down before Mr. Berg came. He went and selected the line. Then I went and got Mr. Berg and he came down and he brought his boat from the basin to the boat house. When they put the line aboard, Mr. Johnson wasn't there at all. He was through after we selected the line.

Q. He was through after you selected the hawser?      A. Yes.

Q. You made two trips to the boat house?

A. Yes.

Q. On the first trip, the Coast Guard boy let you in the door?

A. Yes. I believe it was the Coast Guard with us then. I am not sure. There is lots of times Mr. Johnson goes in and out of there. He is a machinist and he helps—



(Testimony of James H. Corgan.)

Q. They keep that Coast Guard boat house locked? A. Yes, as a general rule, yes.

Q. You are not sure but perhaps that Johnson himself let you in that first time?

A. I am not certain.

Q. You went along the boardwalk that leads to the ground level of that boat house? A. Yes.

Q. Where they store boats? A. Yes.

Q. Then, you say you climbed upstairs into the loft? [137] A. Yes.

Q. That is the second story of the boat house?

A. Yes.

Q. And you found up there several hawsers, did you? A. I beg your pardon?

Q. You found there several hawsers?

A. Yes.

Q. They were all used? A. Yes.

Q. How many of them were there?

A. Oh, I don't know. There was several lines up there. I know of three. The three best ones were lying right at the head of the stairs.

Q. Three, and there may have been more?

A. There may have been more, yes.

Q. Who was with you? You and Boster?

A. Yes.

Q. Johnson, did he go upstairs?

A. He went upstairs, yes, the first trip.

Q. The first trip? A. Yes.

Q. Did the Coast Guard boy go upstairs?

A. I don't know whether there was a Coast Guard boy with us or not.

(Testimony of James H. Corgan.)

Q. You are not sure he was there? [138]

A. No, sir.

Q. You looked over all the hawsers, did you?

A. Yes.

Q. You made your selection?

A. Well, I am not a judge of hawsers. I thought the best-looking ones——

Q. Who made the selection as between you and Boster?

A. Mr. Boster and I never selected the line. Mr. Johnson selected the line.

Q. He selected the hawser?

A. Yes—or showed us which he thought was the best.

Q. So, you took his word for what he thought was the best hawser, did you?      A. Yes.

Q. The hawser was coiled up there, was it?

A. Yes.

Q. How long did that take you?

A. Oh, I don't know, maybe twenty minutes or a half hour.

Q. Then you and Boster and Johnson left there, did you?      A. Yes.

Q. And went up to get Berg?

A. Well, yes, Mr. Boster and I went up and got Mr. Berg.

Q. Johnson left you and you did not see him again that afternoon, is that right?

A. No, I didn't. I am certain of that. [139]

Q. Where did you find Berg?

A. Berg was at home.

(Testimony of James H. Corgan.)

Q. At Bay View?

A. Bar View, yes, sir.

Q. Then you brought Berg down to the boat, did you?

A. No, he drove his own car down.

Q. Then he ran his boat over to the Coast Guard boat house?

A. Yes, sir.

Q. Then you and Boster went in again?

A. Yes, sir.

Q. Did anybody have to let you in with a key this time?

A. The Coast Guard boy, yes, sir.

Q. You again climbed up in the loft and you let this hawser out through the window?

A. Yes.

Q. And Berg coiled it on the boat?

A. Yes, sir.

Q. Johnson was not with you that second time?

A. No, sir.

Q. Johnson did not put his hands on any Government property?

A. Not at that time, no, sir.

Q. You considered the Julia D about the same power and equipment as the Faymar, did you?

A. Yes, I understood that.

Q. You are not an expert on towboats? [140]

A. That is right, I am not.

Q. You say you are not? A. No.

Q. Let us discuss now this conference that took place with Mr. Rathbun. Can you fix the date of that conversation?

(Testimony of James H. Corgan.)

A. Oh, no, I can't. It was somewhere right in the middle of October.

\* \* \* \* \*

Q. Did Mr. Rathbun say that any boat you got would be all right?

A. He said we had to observe the weather and use our own discretion.

Q. He said it did not matter what boat he had?

A. He did not want a skiff. I had an idea that he knew what boat it was.

Q. Did you tell him at that time you intended to borrow a hawser for this towage?

A. No, we did not; didn't even know we would have to.

Q. You did not have in mind at that time you might borrow a hawser for the towage, did you?

A. No, sir.

Q. The only equipment that you owned or that you knew you expected to use was the bridle that you had made?

A. That is right. A towboat usually furnishes their own hawser.

Mr. Snow: That is all.

Mr. Winslow: That is all.

(Witness excused.) [147]

ORVILLE L. BOSTER

was thereupon produced as a witness on behalf of plaintiffs and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Winslow:

Q. Your full name, please.

A. Orville L. Boster.

Q. Where is your home?

A. My home is in Portland.

Q. How long have you had your home in and about Portland?      A. About thirty-five years.

Q. What work are you engaged in now?

A. Pile driving.

Q. Whereabouts?

A. Rockaway. Well, at Wheeler, in fact.

Q. Who is your employer?

A. Mr. Corgan.

Q. What has been your line of work during the past number of years?

A. Operating engineer, leverman on these big dredges.

Q. For whom?

A. For the Port of Portland.

Q. How long did you work for the Port of Portland?      A. About sixteen years.

Q. What was the nature of your duties while in that employment? [148]

A. Leverman, engineer.

Q. What kind of work was your outfit engaged in? What kind of work did they do?

(Testimony of Orville L. Boster.)

A. Well, deepening the channel of the river for ships to come through.

Q. Have you had any experience in towing?

A. Not very much.

Q. Where was what you have had?

A. On the Steamer "McCracken," the Steamer "Winona" and the "Pronto."

Q. Here around Portland?

A. On the Willamette River.

Q. You know what a towline is, do you?

A. Yes.

Q. Do you think you know what a good one is or a bad one?      A. I do.

Q. In what line of work were you engaged in October, 1945?

A. I was leverman-engineer on the Dredge Wisram.

Q. On Nehalem Bay?      A. Yes, sir.

Q. Were you there when the Wishram was towed away from Nehalem Bay by the Julia D?

A. I was.

Q. What kind of a towline did it have? [149]

A. A hemp rope towline.

Q. Approximately how long?

A. Well, I judge around 600 feet.

Q. Approximately how large a line would you call it?

The Court: What are you trying to do, prove it was a good towline? Doesn't he have to prove it was a bad towline?

Mr. Winslow: That is my idea, your Honor,



(Testimony of Orville L. Boster.)

but I am putting on a couple of witnesses as to this line. That is my idea, that he has to prove that. It is up to him to prove it was a bad towline, but, on the other hand, this witness is here.

The Court: Suit yourself.

Mr. Winslow: Well, it may be a little out of order. I will agree to that.

Mr. Snow: I might offer the suggestion that I think it is up to us to show that we had no opportunity to survey the boat.

Q. (By Mr. Winslow): Did you answer the question as to how large it was?

A. About six inches in circumference.

Q. In diameter or circumference?

A. Circumference.

Q. What would you say about that being the ordinary sized towline used in the business generally of towing?

Mr. Snow: Object to that. The witness is not qualified sufficiently to answer. [150]

The Court: Objection sustained.

Q. (By Mr. Winslow): How many towlines have you seen used in business of this kind?

A. Well, quite a good many different kinds.

Q. What sizes? What size a towage would you call this, a small or large?

A. Small towage, light craft.

Q. Do you know what the usual size of a towline is generally used for such a towage? Answer that yes or no. A. Yes.

Q. What size is generally used?

(Testimony of Orville L. Boster.)

Mr. Snow: The same objection.

The Court: Answer.

Q. (By Mr. Winslow): Answer.

A. Yes, they use a line six inches in circumference, if it is nice weather.

Q. Would you say this was the usual line, the usual size used for towages of this kind?

A. Yes, sir.

Q. What kind of weather was it when this tow was started?

A. Well, it was pretty good weather.

Q. Did you yourself have anything to do with picking out the towline? A. Yes, sir.

Q. Where? [151]

Mr. Snow: Answer that yes or no.

Mr. Winslow: Yes.

Mr. Skulason: Can the witness answer more distinctly?

Q. (By Mr. Winslow): Where did you first see that towline?

A. Upstairs in the Coast Guard station.

Q. Who was with you when you first saw it?

A. Jim Corgan.

Q. How thoroughly up there did you examine this particular towline?

A. Well, we went around up there and we picked out that one as the strongest and newest line.

Q. There were other towlines there?

A. Yes, sir.

(Testimony of Orville L. Boster.)

Q. Did you help load that line aboard the Julia D?      A. Yes, sir.

Q. How did you do that?

A. We took it from the coil that was upstairs and put it out through the back window down onto the tug; handed it to the boatman who pulled it aboard.

Q. In the course of the work there, did you see every part of that towline?      A. Yes, sir.

Q. In your experience in these matters, what would you say about that particular towline? What kind of a towline was it?

A. A pretty strong line. [152]

Mr. Winslow: You may cross-examine.

#### Cross-Examination

By Mr. Snow:

Q. Have you ever been a skipper of a tugboat?

A. No, sir.

Q. Or even a deck hand on a tugboat?

A. Yes.

Q. What tugboat have you been a deck hand on?

A. On the Steamer "Winona."

Q. With headquarters in Portland?

A. Yes, sir.

Q. What kind of work was it? What work was a deck hand engaged in?      A. Well——

Q. What work was the tug engaged in, I mean?

A. In towing ships and towing dredges up and down the river.

(Testimony of Orville L. Boster.)

Q. In towages of that kind, you are usually alongside?

A. Yes, and sometimes we used headlines, sometimes alongside.

Q. Who was operating the tugboat "Winona" when you were on it?      A. Captain Sunday.

Q. How long ago was that?

A. Oh, it was around 1916, I would say. I wouldn't say for sure. [153]

Q. How long did you work on the "Winona?"

A. I just worked there until the regular deck hand came back.

Q. How many days would that be?

A. Oh, I would say two weeks on that boat.

Q. You worked as a deck hand on any other boat?      A. I helped on other boats, yes, sir.

Q. But that was practically your only experience in towing?      A. Yes.

Q. You never towed on a hawser, did you?

A. No.

Mr. Snow: That is all.

(Witness excused.) [154]

### JAMES BRAKEMAN

was thereupon produced as a witness on behalf of plaintiffs and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Winslow:

Q. Your name is James Brakeman?

A. Yes.

(Testimony of James Brakeman.)

Q. Speak up so the gentleman over there in the corner can hear you. Where do you live?

A. Live at Ocean Park now.

Q. That is over in Tillamook County?

A. Yes.

Q. How long have you lived in Tillamook County? A. About four years.

Q. What has been the nature of your work? What kind of work do you do for a living?

A. Several different kinds. Carpenter work is my trade.

Q. What kind of work were you doing during the month of October, 1945?

A. Working on the dredge.

Q. The Dredge Wishram? A. Yes.

Q. You do not speak loudly enough yet. Where were you working on or about November 1st, when the Wishram was towed from Nehalem Bay? [155]

A. I had come down on this fishing boat, came from Nehalem Bay—we had come down to Garibaldi.

Q. In other words, you were a passenger on this trip on the Julia D? Don't nod your head. Say Yes or No. A. Yes.

Q. What kind of a day was it when you started out?

A. It was a nice day when we started out.

Q. How was the sea and so forth?

A. It seemed to be calm, as much as I know about a sea.

Q. Were you on there as a workman or just as

(Testimony of James Brakeman.)

member who it was, but someone said that one tank went empty when they changed tanks and it refused to start, the motor got hot, it didn't start right quick. I don't recall who said that.

Q. I didn't get the last part.

A. I don't recall who said that, but someone said that.

Q. Someone on the Julia D?           A. Yes.

Q. Was the towline broken when the dredge went on the rocks?

A. That I don't know. I don't know whether it was broken [158] or not. We was too far ahead to see whether it was broke.

Q. When you went back there, was it broken?

A. It had been broke or cut, one or the other, but it was not connected when we went back there. Whether it was broke or not, I don't know, because I wasn't there.

Q. Prior to the time you went to get a new towline, you were on the Julia D, weren't you?

A. Before that, yes.

Q. Tell us what took place there just before you went to get a new towline between the crew of the Coast Guard boat and the skipper of the Julia D. I am referring to whether there was an offer to take the tow in charge by the Coast Guard.

A. Yes.

Q. What was said about that?

A. There was. The Coast Guard offered to hook on and tow it across the bar and the Julia D refused to let loose of the tow of the dredge; of-



(Testimony of James Brakeman.)

ferred to let the Coast Guard hook on if he would stay hooked on, too, and the Coast Guard refused.

The Court: What are you trying now, the other case?

Mr. Winslow: I am trying to show that this boat was never wrecked because of any unseaworthiness on our part. I think the Court is two steps ahead of me.

The Court: I am trying to get two days ahead of you. [159] That is what I am trying to do. If we get into that other case, we will be here all week.

Mr. Winslow: You may cross-examine.

Mr. Skulason: Your Honor, on that theory, I should not cross-examine on behalf of the Bergs, should I? I have not said anything so far. I thought we were trying the other case first.

The Court: That is what we are doing, yes.

Mr. Skulason: Then I will not cross-examine.

### Cross-Examination

By Mr. Snow:

Q. One or two questions: How many times did that first hawser break?

A. That I couldn't say. I don't remember.

Q. Would you say four times?

A. I don't remember.

Mr. Winslow: I do not see that that is material now. As I understand this witness, the hawser that they are talking about was not on at all at the time she was lost. I don't think that it makes any difference whether it broke twenty times if it was not

(Testimony of James Brakeman.)

the cause of the loss. The hawser that was on there was a different hawser entirely from the one he is talking about. I do not think that is material how many times it broke.

Mr. Skulason: May I ask a question here? Suppose we [160] have to try out the issues between the insurance company and my clients, the Bergs. Suppose we reach that stage in this trial. Then, I should have the opportunity of cross-examining this witness.

The Court: Nothing that has been testified to here can be used in that trial except on stipulation of the parties. I separated the issues at the outset.

Mr. Skulason: That is all right, then, your Honor.

The Court: Be sure you keep your word that you will only ask one or two questions.

Mr. Snow: I asked a question and Counsel objected to it.

Mr. Phillips: I object to it, your Honor.

The Court: He may answer. How many times did it break?

A. That I couldn't say. I don't remember.

The Court: Ask your other question.

Q. (By Mr. Snow): The other question is: Would four times be about right?

A. I wouldn't say because I don't remember how many times.

The Court: You are excused.

(Witness excused.) [161]

FRANCES STEINBACH

one of the plaintiffs herein, was thereupon produced as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Winslow:

Q. Your names is Mrs. Frances Steinbach?

A. Yes, sir.

Q. You are the wife of John L. Steinbach?

A. Yes, sir.

Q. How long have you lived around Tillamook, Mrs. Steinbach?

A. I was born in Tillamook and I am sixty years old. I have lived there all my life except for about seven years.

Q. Have you had any other occupation except that of a housewife?

A. I taught school a good many years.

Q. Mrs. Steinbach, skipping a lot of preliminaries, you knew about the Dredge Wishram, did you?

A. I did.

Q. At and before the time it was purchased?

A. I did.

Q. How long had you known Hugh Corgan?

A. Personally, I think I have known him about three or four years.

Q. But your husband has known him——

A. A long time, yes. [162]

Q. Now, at the time the Dredge Wishram was purchased from the Government, or prior to that time, did the Steinbach family have any discussion

(Testimony of Frances Steinbach.)

as to how the title to the Wishram should be taken and held?      A. They did.

Q. Just tell the Court what discussion they had.

Mr. Snow: If your Honor please, may I have a continuing objection and exception to all testimony of this character tending to show title by parole?

The Court: It is so understood. Proceed.

A. Shall I go on?

Q. (By Mr. Winslow): Go ahead, please.

A. We met at Dave Steinbach's house, John, my husband John, Dave and Carolyn, and we planned on buying this dredge, the Wishram. We talked it over for quite a while and then we decided that Carolyn and myself should have the Wishram, and it was done for convenience.

The shop had been in the names of John and Dave for years, and we never had had a real good living out of the shop and, so, we thought maybe we could get into something else—if we could get into something else we would have a little bit, maybe we could make a little bit more money than we had in the shop. Not only that, but Dave Steinbach had two boys in the service.

Q. This was all talked over in the family conference? [163]      A. Oh, yes.

Q. Go ahead.

A. We had a boy in the service, too, and we thought we could put this in our names, in the women's names, and then, after it got into working order of some sort, then we would probably turn

(Testimony of Frances Steinbach.)

it over to the boys, or some other affair, but it was not done—it was not to be done until after everything was paid off and was in working order.

Q. Then, will you say all four of you agreed then to that plan?      A. We did.

Q. Was that plan ever changed?

A. Never.

Q. Have you ladies ever transferred, orally or otherwise, any interest in the Wishram?

A. Never.

Q. What part, if any, then, did you have in securing the insurance on the Wishram?

A. I helped them in money matters.

Q. Who paid the——

The Court: That has all been covered.

Mr. Winslow: I think it has.

The Court: There is no dispute about that.

Mr. Winslow: You may cross-examine. [164]

### Cross-Examination

By Mr. Snow:

Q. Mrs. Steinbach, you are familiar with the promissory note that is in evidence as Exhibit 11 attached to Exhibit No. 7?      A. I am.

Q. The promissory note in the sum of \$2,925?

A. Yes.

Q. Payable to yourself?

A. Yes, if it is the one that we have—payable to me.

Q. That was the amount of your loan to your husband and Dave Steinbach, wasn't it?

(Testimony of Frances Steinbach.)

A. Something might happen before that, before they get money enough to do that.

Q. If they get money enough, they will pay it?

A. That is what they say.

Q. You testified in Tillamook, didn't you, in this case about a year ago? A. Yes, sir.

Q. I will ask you if you said at that time, in answer to questions from me, as follows.

"Q. This was just a straight loan?"

Mr. Winslow: What page?

Mr. Snow:

"Q. This was just a straight loan to your husband and his brother? A. Yes.

"Q. You made it *before* they were honest men and good business men and you felt they would pay you back, is that right?

"A. Yes.

"Q. And it was an unsecured loan?

"A. Yes, without interest.

"Q. It was just a loan made because of your confidence in their own personal honesty and integrity, is that right? A. Yes, sir.

"Q. And made without interest?

"A. Yes, sir."

Did you testify as I have read there?

A. If it is there, I did. [168]

Q. You helped your husband by keeping the books of the Steinbach Iron Works, didn't you?

A. Yes, sir.



(Testimony of Frances Steinbach.)

Q. Are you familiar with the account in the books of the Steinbach Iron Works under the name of "Frankie"?

A. That is my nickname. That is the name I always go by.

Q. That is your nickname? A. My name.

Q. "Frankie" refers to yourself?

A. Yes.

Q. I will ask you to look at that account. The Bailiff will show you that account. I will ask you if you are not familiar with that?

A. I know what it is.

Q. Perhaps you can testify from memory that it is correct?

A. It is correct; if it is the one I made out, it is correct.

Q. It shows a total loan by yourself to the Steinbach Iron Works of \$2,925, doesn't it, advanced in three different amounts?

A. Whatever is on there.

Q. It shows total payments made of \$1,275, doesn't it?

A. Whatever is there is correct.

Q. It is all correct? A. Supposed to be.

Q. Did you ever have anything to do with the organization [169] of this trust?

A. I did not.

Q. You did not have anything to do with that?

A. No.

Q. At the time of these talks in the family that you were telling about, did they talk about going

(Testimony of Frances Steinbach.)

into business in the name of the trust, the Coast Dredging & Construction, Ltd.?

A. Not at first.

Q. Not at first?           A. No.

Q. Did they say anything about dividing the share of that trust three ways between Captain Corgan, your husband and Mr. Dave Steinbach?

A. After things got in working order, they were to do it that way, but Jimmy Corgan was to have two shares, too.

Q. Jim Corgan was to have two and then the rest of the shares were to be divided equally between the three men?

A. Yes, but that was after it was all in working order.

Q. That was talked about during these family talks?

A. It might have been at one or two, but not all the time.

Q. But it was at some of these talks, was it?

A. It was among John and I.

Q. Was it talked about in the family before the dredge was purchased? [170]           A. No, sir.

Q. It was not?           A. No, it was not.

Q. How long after the dredge was purchased was it talked about?           A. I don't know.

Q. How is that?           A. I don't know.

Q. You know that they at some time planned to divide the shares in that trust equally between your husband, Dave Steinbach and Captain Corgan, with a few shares to Jim?

(Testimony of Frances Steinbach.)

A. After everything else was fixed up. After all bills were paid back to the Steinbach Iron Works and after everything was cleaned up, why, then it was going to be another working organization.

Q. It was only to take effect after the Steinbach Iron Works had been paid all the money that they had put out on this dredge?      A. Yes.

Q. Is that right?

A. Yes, all their working capital and everything that they had put into the dredge.

Q. They put in all the money that went into it, didn't they?      A. You know they did not.

Q. What is that?

A. You know they did not put in all the money. I put part of that money in.

Q. Yes, you loaned that money to your husband?

A. I put it in. I loaned it. I didn't know whether I would get it back or not.

A. After everything was all paid up by the Steinbach Iron Works, then they were to go into business, with a division of profits three ways?

A. Yes, sir.

Q. Then you and your sister-in-law were not going to have any share in that trust, were you?

A. We were going to have the share of our husbands. Whatever is my husband's, I have myself. That is the way we figure it among ourselves. We have always figured it that way.

(Testimony of Frances Steinbach.)

Q. Didn't you testify in Tillamook that what was your husband's was yours as well?

A. Why, sure, I suppose so. What is the difference? It is all in the family.

Q. This money you loaned came out of your own school-teaching money?

A. It did. I had a savings account that I put it in.

Q. If this plan had gone through, you and your sister would not have owned that dredge at all?

A. Not afterwards.

Mr. Snow: That is all.

#### Redirect Examination

By Mr. Winslow:

Q. Counsel brought out on cross-examination that you had kept the books of the Steinbach Iron Works. How long had you kept the books for the Steinbach Iron Works?

A. I know it was twenty-five years anyway, and I never received one cent of pay for that twenty-five years keeping books.

Mr. Winslow: That is all.

(Witness excused.)

(Plaintiffs rest.)

Defendant Universal Insurance Company's  
Testimony

EMMETT RATHBUN

was thereupon produced as a witness on behalf of the defendant Universal Insurance Company and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Snow:

Q. Your name is Emmett Rathbun?

A. It is.

Q. Where do you live?

A. I live in Oswego, Oregon.

Q. What is your business or occupation? What is your business connection?

A. I am a partner in the firm of Jewett, Barton, Leavy & Kern.

Q. At the time of the loss of the Dredge Wishram, what was your business connection?

A. I was associated with Addison P. Knapp Co.

Q. Addison P. Knapp Co.?

A. Yes, sir, that is right.

Q. That company, I understand, has been merged into the firm you have just named?

A. That is right.

Q. Are you skilled as a marine surveyor?

A. I have been a marine surveyor—I have done marine surveying work since 1939.

Q. Describe briefly the marine surveying you have done. [174]

(Testimony of Emmett Rathbun.)

A. Before risks in marine lines are written, we survey the boat for seaworthiness and condition and value, and, at the time of accidents, I take charge of the repair work and supervise the salvage, if any, and put the boat in the same condition it was prior to the accident.

Q. What character of craft have you surveyed in the manner you have described?

A. Tugboats, barges, fishing boats, dredges—all types of craft other than the larger ships.

Q. You have not done surveying of the larger ships?      A. No.

Q. Have you, to some extent, surveyed ocean-going boats?      A. Only fishing boats.

Q. Most of your surveying has been in connection with such craft as operate on the Willamette and Columbia Rivers?

A. That is right, and the Coast waters.

Q. Are you acquainted with an office in Portland known as the Portland Marine Underwriters?

A. I am.

Q. What is your relation, as a surveyor, to that office?      A. Well, we do some work.

Q. By "we" you mean yourself?      A. I do.

Q. Who constitutes the Board of Marine Underwriters?

A. That is a group of insurance companies in San Francisco, [175] which formed and organized the Board of Marine Underwriters. It is a non-profit organization.

Q. Does the Universal Insurance Company subscribe to that Board?      A. I think they do.



(Testimony of Emmett Rathbun.)

Q. Do they have an office in Portland?

A. They do.

Q. Do they do surveying? A. They do.

Q. They have men there skilled in marine surveying?

A. You are talking about the Board of Marine Underwriters?

Q. The Board of Marine Underwriters.

A. Yes.

Q. You are acquainted with Captain Hugh Corgan, are you? A. I am.

Q. Let's go back to June of the year 1945. I will ask you to describe or tell what you know about the original issuance of this policy of marine insurance that is in suit in this case.

A. In general?

Q. In general.

A. That is one that was issued at Coos Bay and brought up?

Q. Yes. Did you take part in any of the negotiations for that insurance?

A. Only in talking to Mr. Corgan. It was turned over to Mr. Knapp and Mr. Banks at Coos Bay for surveying. [176]

Q. A conference has been described here that took place in Mr. Knapp's office in which John L. Steinbach and Mr. Corgan took part, for the purpose of discussing this policy. Did you take part in that conference?

A. There were several conferences. Which one is it?

(Testimony of Emmett Rathbun.)

Q. Well, the conference in which was discussed the particular question of the policy being issued in the names of the two ladies. Did you take part in that? A. I did not take part in that.

Q. Did you have anything to do with fixing the valuation of the Dredge Wishram or surveying her at the time of the inception of the policy?

A. I turned her over to Mr. Banks, as far as his survey was concerned.

Q. Do you recall the towage of the Wishram from Coos Bay to Nehalem Bay?

A. I do, yes.

\* \* \* \* \*

Q. That takes us down to the trip which you made down to the Coast for the purpose of surveying the dredge. I want you to fix the date of that trip, as nearly as you can.

A. According to my report it was on the 17th of October.

Q. What day of the week was that?

A. Wednesday.

\* \* \* \* \*

Mr. Snow: That is all.

### Cross-Examination

By Mr. Winslow:

Q. Mr. Rathbun, you are positive you were there on October 17th?

A. We were there on a Wednesday. My report says October 17th.

\* \* \* \* \*

OTTO BERG, JR.

Third Party-Defendant, having been previously duly sworn, resumed the stand and testified as follows in behalf of the defendant:

Direct Examination

By Mr. Snow:

Q. You are Otto Berg, Jr., skipper of the *Julia D* at the time of this towage of the dredge?

A. Yes.

Q. You have already been sworn as a witness in this case?           A. Yes.

Q. I call your attention to the negotiations you had with Mr. Corgan about the employment of your vessel for this purpose. I will ask you if at that time Mr. Corgan said anything to you about having approached Mr. Knapp of the *Umpqua Chief* about this towage?

A. When young Mr. Corgan came to the house to engage me for doing this tow job, the only question of the mention of the *Umpqua Chief* that came up was when he asked me what I would charge for the job, and I told him I didn't know how much to charge for that job, and I asked him at that time how much the *Umpqua Chief* would have charged and he said [226] "around \$500."

Now, the reason that I quoted the price of \$150, plus \$25 for a man, was that I was interested in having that dredge work in the moorage basin at Garibaldi. I was interested in building a dock there to go into the fishing business, from the whole-

(Testimony of Otto Berg, Jr.)

sale end of it, and I could not do that without having that basin dredged out, to bring my boat up alongside.

Q. Having reference to the hawser with which you started the towage, how many times did that hawser break?

A. About four times, four or five times.

Q. That was on the towage in question, was it?

A. Yes.

Mr. Snow: That is all.

#### Cross-Examination

By Mr. Phillips:

Q. That was not the hawser at all that you fastened to the dredge when it went on the rocks, was it? A. No, that was not the one.

Q. The hawser that you are talking about that broke four or five times was not in use at all when the dredge was lost, was it?

A. No, but the question—if that first hawser had been good, the dredge would have been——

Mr. Phillips: Wait a minute. [227]

Mr. Snow: Let him answer.

Mr. Phillips: He is arguing now.

Mr. Snow: I think he asked for it, your Honor.

Mr. Phillips: I asked him if that was the hawser and he said no. He is trying to argue the case, now.

Q. As a matter of fact, you had the hawser that the Coast Guard went in and brought out to you and fastened on with, isn't that right?

A. Yes.

(Testimony of Otto Berg, Jr.)

Q. That hawser did not break before you went on the rocks, did it?           A. No.

Q. That hawser was still holding when you went on the rocks, isn't that true?

A. That is right.

Mr. Phillips: That is all.

Mr. Snow: He was unable to complete his answer when Mr. Phillips interrupted him.

The Court: No. We are trying the other case, now.

Mr. Snow: O.K.

(Witness excused.) [228]

#### ADDISON P. KNAPP

was thereupon produced as a witness on behalf of the defendant and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Snow:

Q. You are Addison P. Knapp?

A. Yes, sir.

Q. You live in Portland?           A. Yes, sir.

Q. You were formerly the head of the insurance firm of Addison P. Knapp & Company?

A. That is correct.

Q. Of which Mr. Rathbun was a member?

A. At the time of this loss, yes, he was a junior partner.

(Testimony of Addison P. Knapp.)

Q. That firm is now merged with Jewett, Barton, Leavy & Kern, is it? A. That is correct.

Q. Referring now to your former firm of Addison P. Knapp & Company, did they conduct a marine insurance business or agency in Portland?

A. Conducted a general insurance business. The larger portion of the policies going through our books was marine insurance.

Q. What was your marine insurance connection?

A majority of our business was placed with the firm known [229] as Talbot, Bird & Company, who are managers for several different insurance companies, the Universal Insurance Company and other companies.

Q. Talbot, Bird & Company have offices in San Francisco?

A. They do. The San Francisco office is in charge of their entire Pacific Coast operations.

Q. San Francisco is your correspondent?

A. That is correct. I am not—never have been employed by any insurance company. I am a local agent—what is known as a local agent, reporting through San Francisco.

Q. What is the name of the man who is in charge of the marine insurance department of Talbot, Bird & Company in San Francisco?

A. The Vice-President and General Manager of the Pacific Coast office, with headquarters in San Francisco, is Harry Browne.

Q. I will direct your attention to a date, approximately June 6, 1945, and ask you if you had



(Testimony of Addison P. Knapp.)

a visit at your office from Captain Corgan and John L. Steinbach?      A. I did.

Q. Did you know or had you known Captain Corgan before that time?

A. Yes, I had known Captain Corgan for some years.

Q. Had you known Mr. Steinbach before that time?

A. No. That was the first time I had ever met Mr. Steinbach. [230]

Q. Did you confer at that time with these two men?      A. Did I what?

Q. Did you at that time confer with these two men?

A. I did, regarding insurance on the Dredge Wishram.

Q. Was there anybody else present at that conference, according to your recollection?

A. Not according to my recollection. There was just the three of us.

Q. Did they make a proposition to you in regard to the Wishram?

A. Yes. They wanted to know what I thought the rate would be, and they explained that the dredge would be laid up at Coos Bay for some little time, and she would then be towed from Coos Bay to Winchester Bay.

I explained to them that I would be very happy to arrange a binder insurance on the dredge at Coos Bay at an open rate, which would probably be three per cent on the agreed value, but that, so far as

(Testimony of Addison P. Knapp.)

the cost of the trip up the Coast, I could not quote on that until after I had referred the matter to San Francisco, and that it could not be referred to San Francisco until the dredge had been surveyed and valued.

Q. You spoke a minute ago of Winchester Bay. Did you mean to say Nehalem Bay?

A. I meant Nehalem Bay. [231]

Q. Was anything said at that time about the name of the towing vessel to make this towage?

A. There was some discussion as to what vessel would make the tow to Nehalem Bay. It is my recollection that Captain Corgan said they were negotiating with a vessel down there that was used as a pilot boat, and I don't know whether he reported that they had already been in negotiation with or probably would negotiate with the owner of the Umpqua Chief.

I told him by all means it would be necessary for him to advise Surveyor Banks what vessel, whether it be the two he had in mind negotiating for or any other, before starting on the towage—before starting on the towage, the name of the vessel would have to be supplied Surveyor Banks, so he could check the condition of the vessel and approve it. In placing the insurance in San Francisco, we would have to report to San Francisco that the dredge and the towing vessel would be approved by the surveyor, Banks, representative of the Board of Marine Underwriters at Coos Bay.

Q. Did Messrs. Corgan and Steinbach accept the conditions that you imposed?

(Testimony of Addison P. Knapp.)

A. Oh, yes. In fact, Captain Corgan said he was familiar with those regulations; he had a very extensive towing experience.

There was some discussion as what would be the proper insurable value of the dredge. It is my recollection that we agreed tentatively on the valuation of \$12,500 for the coverage, during that conference. No policy was issued, but verbally we were bound, with the understanding that whether that value would be the final insurance value would have to be submitted to San Francisco after the dredge had been surveyed.

Q. Did you then ask Mr. Banks to make the survey for you?      A. I did.

Q. What survey did you request?

A. I requested a survey of the entire towing venture from Coos Bay to Nehalem Bay of the dredge and whatever towing vessel they would name.

Q. Where those surveys made?

A. They were. Mr. Banks forwarded—I don't know how many copies—the original and several copies to my office and at least one copy of Mr. Banks' report was sent to the Underwriters in San Francisco.

Mr. Snow: I hand the Reporter a paper and ask that it be marked as an exhibit.

(Document entitled "Surveyor's Report" dated June 13, 1945, in re Dredge Wishram, thereupon marked Defendant's Exhibit No. 41 for identification.)

(Testimony of Addison P. Knapp.)

Mr. Winslow: I wish to object to this. It is an instrument [233] executed by Mr. Banks under date of June 13, 1945, so it could not throw any light on the issues in this case.

The Court: It may be received, subject to the objection.

(Document entitled "Surveyor's Report," dated June 13, 1945, signed Robert Banks, thereupon received in evidence and marked Defendant's Exhibit No. 41.)

Q. (By Mr. Snow): Is Defendant's Exhibit No. 41 the report of Mr. Banks' survey of the dredge and tug, the Umpqua Chief?

A. Dated June 13, 1945, yes. This is a signed copy of the report which Mr. Banks sent to me, one or more copies of which were sent to San Francisco.

Q. What action, if any, did you later take on the basis, partly, of the Banks' survey?

A. After I received clearance from San Francisco, and had talked with Mr. Banks and determined that the owners or representatives of the owners had agreed to have the towing done by the Umpqua Chief, I issued a policy of insurance with the Universal Insurance Company, insuring the Dredge Wishram for \$12,500, carrying the further stipulation and an additional premium which extended the coverage for one voyage from Coos Bay to Nehalem Bay.

(Testimony of Addison P. Knapp.)

Q. I wish to take you back to the conference you described in your office. I will ask you if the point was raised at that conference as to in whose names the policy would be [234] written?

A. Oh, yes. That was one of the last matters discussed before the two gentlemen left my office. I said, "Now, when we receive clearance on this matter and the policy is to be issued, in whose name should it be written?" And Captain Corgan said, "Mr. Steinbach will have to answer that," and he furnished the names of the two ladies, Frances Steinbach and—I don't recall the first name of the other Steinbach lady.

Q. Carolyn?

A. That is correct. And I said, "Well, it is rather unusual to insure a piece of equipment such as this in ladies' names. How does it happen it is to be insured in the names of these ladies?" And the reply was that the dredge had been bought or was being purchased in the names of these two women. I made a notation of the two names and when the policy was written those names were used.

Q. Who made that reply as to the manner in which the dredge was to be or had been purchased?

A. John Steinbach.

Q. There is some testimony to the effect that, at the time of the conference, there was in the pocket of John Steinbach or perhaps Captain Corgan, a letter from the Corps of Engineers, trans-

(Testimony of Addison P. Knapp.)

ferring that dredge to Captain Corgan. Was that letter exhibited to you at that meeting? [235]

A. No, that letter was not exhibited to me.

Q. Were the contents of the letter stated to you verbally at the meeting? A. They were not.

Q. Had they, that is, Mr. Steinbach and Mr. Corgan, told you at that meeting that the dredge had been transferred from the Government Engineers to Mr. Corgan, would you have issued the policy of insurance covering the dredge in the names of the ladies?

A. No, I would have told them that the proper way to insure the dredge would be in the name of whoever might hold title to it.

Q. Did either Mr. Corgan or Mr. Steinbach tell you at that time that the Steinbach Iron Works had paid any money for the purchase of the dredge or furnished money for the purchase of the dredge?

A. They did not.

Q. Did either one of them tell you that the reason that that insurance—the reason they were insuring the dredge in the names of the ladies was to keep the money away from the creditors of the Steinbach Iron Works?

A. They did not. They simply said the dredge was being purchased in the names of the women, with their money.

Q. Did either of these gentlemen explain to you at that time about the purpose to organize a trust called the Coast [236] Dredging & Construction, Ltd., in which the two Steinbachs would have ap-



(Testimony of Addison P. Knapp.)

proximately 32 per cent each and Captain Corgan would have about the same amount and Captain Corgan's son would have 4 per cent?

A. They did not.

Q. They did not tell you about that plan to go into business together?

A. No mention made of it at all.

Mr. Winslow: I think the Court has been very liberal. I won't object to them telling what they did, but I think that ought to be sufficient. To ask what they did not say might take all afternoon on that one proposition.

Q. (By Mr. Snow): When did you finally learn that the two ladies did not own the dredge?

Mr. Winslow: We will object to that as calling for a conclusion of the witness.

Mr. Snow: I think, your Honor, that is of some importance in this case.

Mr. Winslow: Assuming something.

Mr. Snow: I think it is important, your Honor.

The Court: Answer.

A. I did not learn until some time after the accident. I believe I first learned the dredge was not owned by the women from you, after you had made some investigation of this matter. [237]

Q. Do you recall the application for the extension of this towage, the extension of this policy, rather, by endorsement to cover the towage from Nehalem Bay to Tillamook Bay?

A. I remember Mr. Rathbun told me that such

(Testimony of Addison P. Knapp.)

an application had been made to him over the long-distance telephone.

Q. Did he tell you at that time what he said— Did he tell you what had been said about the towing vessel?

A. Yes. We had a discussion of a few minutes' duration, during which he told me that the towing arrangements would be the same for the trip from Nehalem Bay to Tillamook Bay as had prevailed during the trip from Coos Bay to Nehalem Bay, namely, the dredge would be boarded up and the towing would be done by the Umpqua Chief.

Q. Did you know about Mr. Rathbun's survey of the dredge after that time?

A. Did I what?

Q. Did you know of Mr. Rathbun's survey of the dredge after that time? A. Oh, yes.

Q. Did anybody ever tell you that the towage from Nehalem Bay to Tillamook Bay would be made by the Faymar or the Julia D or some other similar vessel?

A. No. The only information I had on how the towing would be done was the original conversation I had with [238] Mr. Rathbun, in which he reported this telephone conversation with Captain Corgan and, after he had been down and made the survey, his written report stated that he approved the tow being made by the Umpqua Chief.

Q. Had any disclosure been made to you—  
The Court: Is that the report in evidence, the

(Testimony of Addison P. Knapp.)

one just received? Is the report just referred to in evidence?

Mr. Snow: His report in evidence?

The Court: Yes.

Mr. Snow: I have not put it in evidence. I will offer it in evidence, the survey made by Mr. Rathbun of the Dredge Wishram.

Mr. Winslow: That will be No. 42.

Mr. Snow: Yes.

The Court: Admitted.

(Signed copy of report of Emmett Rathbun, Marine Surveyor, in re "Suction Dredge Wishram," thereupon received in evidence and marked Defendant's Exhibit No. 42.)

Q. (By Mr. Snow): Had disclosure been made to you that the Julia D or the Faymar or some similar vessel would undertake the tow of the Wishram from Nehalem Bay to Tillamook Bay, would you have issued the endorsement that you subsequently issued, or what would have been your position?

A. My position at that time of the year—it was late in [239] the season for outside towing—would have probably been to tell the owners or their representatives that we could not insure the risk in the tow of a fishing vessel, unless that vessel were approved by a representative of the Board of Marine Underwriters in San Francisco, or a correspondent of the Board of Marine Underwriters. However, I might not have gone that far because

(Testimony of Addison P. Knapp.)

with over twenty years' experience in the marine insurance business I would have probably known that no qualified surveyor would approve a fishing vessel without power, towing gear on it for outside work, late in the season, if at all.

Q. Did anybody tell you, before this endorsement was issued by you, that the towage would be attempted by the use of a hawser taken from the loft of the Coast Guard boat station?

A. No, the only information I had was to the effect that the towage would be done by the Umpqua Chief, and I knew from the previous trip that she had her own towing gear which was furnished for that trip and would undoubtedly use that gear on the return trip to Tillamook Bay.

Q. If disclosure had been made to you that the towage would be made by a hawser taken from the loft of the Coast Guard boat station at Garibaldi, what would have been your position?

A. I would undoubtedly have insisted upon the Board of Marine Underwriters' survey of the entire venture. The only thing that we had to check on, so far as I knew at the time [240] I requested Mr. Rathbun to go down and make the survey, was information in my possession that the tow was to be made by the Umpqua Chief and the only thing that had to be checked was whether or not the dredge was taking any water and whether or not she was boarded up. Mr. Rathbun, with years of small vessel experience, was perfectly qualified to pass on those matters.

(Testimony of Addison P. Knapp.)

Q. What is the reason why you would have insisted on a Board of Marine Underwriters survey of a new vessel and equipment for a towage such as this?

A. The main reason is because, in arranging either a new policy or new conditions to a policy previously issued with the San Francisco Underwriters, if the towing vessel or the article or equipment to be towed is something that has not previously been surveyed and approved by representatives of the Board of Marine Underwriters, they will not grant the coverage.

Q. Why wouldn't they grant the coverage?

A. Because, it is a standard requirement of the Underwriters to have any towing vessel and piece of equipment and equipment to be towed surveyed by a representative of the Board of Marine Underwriters.

Q. Would it make any difference, the fact that the tow was to be very short, only five to eight miles, over a bar at each end? [241]

A. As long as there is any outside towing involved, passing over a bar and crossing another, where the vessel has not previously been approved by the Board of Marine Underwriters in San Francisco, the Board of Marine Underwriters in San Francisco always require a survey by a representative of the Board of Marine Underwriters or a correspondent of the Board of Marine Underwriters.

Mr. Snow: That is all. You may cross-examine.

(Testimony of Addison P. Knapp.)

Cross-Examination

By Mr. Winslow:

Q. Mr. Knapp, you say the first information you had that these plaintiffs were not the owners of the dredge was information given to you by Mr. Snow.

A. I said I believe it was information I had.

Q. Whom did Mr. Snow tell you owned it?

A. I don't know that I can answer—I don't know that I can recall.

Q. Did he say they did not own it and leave it that way?

A. As near as I can recall the conversation, he said that that dredge originally had been transferred, so far as he could ascertain from the records, to Captain Corgan.

Q. You took it from that Captain Corgan was the owner of the dredge, did you?

A. This all took place long after the loss.

Q. I know, but you took it from that that Captain Corgan [242] was the owner of the dredge?

A. I assume I did.

Q. Did Captain Corgan claim to be the owner of it when the insurance policy was issued?

A. No, he did not.

Q. How is that?                      A. He did not.

Q. You knew he did not claim to be the owner of it. Did you ask him—did you argue the thing with Mr. Snow when he said that, or just let it go at that?

A. There was no occasion for me to argue with Mr. Snow about it.



(Testimony of Addison P. Knapp.)

Q. All right. Going back to the time when the policy was issued, you say you told Mr. Steinbach and Mr. Corgan that it was kind of peculiar to issue a policy of this nature in ladies' names?

A. I don't know as I used the word "peculiar." I think I said "somewhat unusual."

Q. I think you used the word "peculiar" before.

A. If I used "peculiar," I would prefer the word "unusual."

Q. Did Mr. Steinbach tell you they were buying the dredge in the names of the ladies?

A. Mr. Steinbach told me that.

Q. Did you make any further inquiry about it?

A. I did not. In the insurance business we make a custom [243] of accepting information of that sort.

Q. I didn't get part of that.

A. In the insurance business we make it a practice to accept such statements at their face value.

Q. You say in these negotiations for moving the dredge from Nehalem Bay to Tillamook Bay you relied considerably upon Emmett Rathbun's report, did you?

A. Yes.

Q. To permit the towing or, rather—strike the "permit"—extend the insurance to cover the trip from Nehalem Bay to Tillamook Bay?

A. Nehalem to Tillamook?

Q. Yes.

A. Yes. I at least saw his report and read it.

Q. And studied it, of course, did you?

(Testimony of Addison P. Knapp.)

Q. How do you know you had that report in your files before the accident?

A. Well, because I would not have issued the endorsement [246] permitting the trip up without having a survey report on it.

Q. Let us take that, now. When did you issue the endorsement?

A. If my memory serves me correctly, it was dated October 24, 1945.

Q. What did you do with it when you issued it?

A. I apparently dictated a letter addressed to Captain J. H. Corgan at Garibaldi, Oregon—on what date that letter was dictated I can't say, but apparently she mailed it on October 30th.

Q. The letter is dated October 30th, too?

A. That does not necessarily mean that it was dictated on October 30th. Our letters are always dated the date on which they are typed.

Q. You think your secretary was six days behind in sending out these riders?

A. Very possible. We have had a change in office help. As anyone who has had experience in operating an office in the City of Portland knows, at least during the years 1943, 1944, 1945 and 1946, office help was quite a problem.

Q. You were particularly anxious that this tow be as early as possible. It was getting late, wasn't it?

A. Getting late, certainly.

Q. Yet you held the rider six days there in the office after it was prepared? [247]

A. It apparently was not mailed out for six days.

(Testimony of Addison P. Knapp.)

It was not purposely held in the office, I can assure you of that.

Q. Why did you wait until October 24 before you issued it?      A. 24th?

Q. 24th.

A. I assume this survey report of Mr. Rathbun's was not typed until October 24th. That would be a logical explanation.

Q. I think his testimony was that he made the survey on October 17th.

A. That does not mean the report was typed on October 17th.

Q. You were in a hurry to get this tow over with, weren't you?

A. The tow was to be made only in good weather. We had already agreed to insure the boat after October 15th deadline, so the main thing was not the matter of hurry; it was a matter of getting it done in good weather.

Q. In other words, you do not think they needed a rider to make the tow?

A. Not after we told them we would insure the vessel.

Q. Is it your understanding they did not need this rider before they would be authorized to go ahead with the tow? Answer. You are certainly entitled to make any explanation you may want to make, but I thought you were going to say something else. [248]

(Question read.)

(Testimony of Addison P. Knapp.)

any given date, without looking in my files. I don't know whether there is anything in the files. I assume that probably is the correct date.

Q. When they left your office on the day that they did come in there, you knew all about the loss of the Dredge Wishram, didn't you?

A. Certainly.

Q. You knew that it had been towed by the Julia D?

A. Yes, I did.

Q. You knew the Umpqua Chief had not been used, didn't you?

A. Yes, I did.

Q. When did the report go to San Francisco, the report that she was a total loss?

A. The report that she was a total loss?

Q. Yes.

A. Oh, not for some little time after the loss. I do not believe the matter was reported to San Francisco until after Rathbun had rendered his report of investigation down there. I am not certain of that, but I know there was some time lag from the time of the loss until it was reported to San Francisco. [251]

Q. I think the report of Mr. Rathbun is here in evidence, but I do not recall the date. Do you recall the date?

A. No, I don't.

Mr. Winslow: My associate says there is no date on it, so we won't go into that any more.

The Court: When do we hear about the checks? What about it? Why were they cashed afterwards?

Q. (By Mr. Winslow): Tell us, then, why was it that Plaintiffs' Exhibit No. 33, the check for

(Testimony of Addison P. Knapp.)

\$187.50, was cashed by your office on November 8th, if you knew all about the Umpqua Chief did not do the towage?

A. The check, I believe, was received in my office on October 31st, was passed immediately to my bookkeeper who handled all the bank depositing by rubber stamp. I believe you will find the rubber stamp on that. Am I not correct?

Q. Yes, that is correct. You may see the exhibit, if you want to.

The Court: What was the premium for that tow?

Q. I neglected to ask you about a line in your re-been \$1,250, as I recall it.

Q. (By Mr. Winslow): Advance \$187.50, is that it?

A. That is the premium in the event there is no loss. This is what the premium would have been in the event there is no loss. There are two things involved. Just as I say, this [252] is the method that we use for depositing checks. This check is passed to my bookkeeper on October 31st and presumed to have been taken to the bank on that day. I do not make a practice of checking the cash book and cash account every night. I presumed this check had been deposited prior to the loss.

Q. Did you ever ask her why she waited until November 8th to cash that check?

A. I believe I asked her some time later when the matter was discovered.

(Testimony of Addison P. Knapp.)

Q. She is available here, isn't she? She is here, is she not, to testify? A. Yes.

The Court: Was not the premium from Coos Bay paid in advance?

Mr. Winslow: Yes.

The Court: Why wasn't this paid in advance?

Mr. Winslow: It was. It was paid before the tow.

The Court: There is a flat premium from Coos Bay, paid in advance.

Mr. Winslow: Yes, the premium paid at Coos Bay.

A. The premium from Coos Bay, on the northern trips was paid, the full \$1,250.

Q. (By Mr. Winslow): Was the—was it customary to pay the full premium in advance? [253]

A. There is no particular custom on that. Sometimes the full premium is paid and sometimes not.

Q. It is satisfactory to the company to pay it like this was paid?

A. Well, if they are to recover on the policy, there would be due the difference between \$1,250 and the amount of this check.

Q. Yes, but all the requirements of the insurance company were that the \$187.50 was to be paid on this particular premium. Wasn't that right?

A. I don't think that there was any requirement discussed as to the payment of the premium.

Q. In other words, it would have been all right if they had towed the dredge without payment of any part of the premium?



(Testimony of Addison P. Knapp.)

A. That is correct.

Mr. Winslow: That is all.

Mr. Snow: No redirect examination.

(Witness excused.) [254]

Mr. Winslow: Plaintiffs' Exhibit No. 37, if the Court please, is a statement from the insurance company for the payment of the premium \$187.50 under date of October 24th, and shows the full amount of the premium and the amount to be paid.

Mr. Snow: If the Court please, may I have leave to put Mr. Rathbun back on the stand to ask him one or two more questions?

The Court: All right.

### EMMETT RATHBUN

produced as a witness on behalf of the defendant Universal Insurance Company, having been previously duly sworn, was recalled and was examined and testified as follows:

#### Direct Examination

By Mr. Snow:

Q. I neglected to ask you about a line in your report, in your survey of the Dredge Wishram, that the Dredge Wishram was owned by Captain Corgan. How did that statement come about?

A. Only that Corgan was in the office and I was dealing with him. I really never looked at the papers on the Wishram to see who owned it at all.

Mr. Snow: That is all.

(Witness excused.) [255]

## WENDELL WYATT

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Snow:

Q. Mr. Wyatt, you are an attorney-at-law, are you?      A. Yes.

Q. A member in good standing of the Oregon State Bar?      A. Yes.

Q. You practice in Astoria?      A. Yes.

Q. You were formerly a resident of Portland?

A. Yes.

Q. Did I employ you, in the early part of 1946, to take a trip down the Coast to make some investigation of the loss of the Dredge Wishram?

A. Yes.

Q. In the course of that, did you have a conversation with Mr. Otto Berg, Jr.?

A. Yes, sir, I did.

Q. Did he deliver to you what purports to be a piece of the hawser which parted several times in towing the Wishram?      A. Yes, it did.

Q. Have you got that with you?

A. I do have. [256]

Mr. Snow: There was a defendant's pre-trial exhibit number reserved for that. I offer that in evidence.

Mr. Phillips: Objected to as incompetent, irrelevant and immaterial; it has not been properly iden-

(Testimony of Wendell Wyatt.)

tified, and it has no bearing on this case because the testimony is that was not the hawser that broke and, if that was not the one that broke, it did not have anything to do with the dredge going onto the rocks.

The Court: I suppose there are ways of identifying it.

(Piece of hawser thereupon received in evidence and marked Defendant's Exhibit No. 20.)

Q. (By Mr. Snow): You have another piece of hawser. What does that purport to be?

A. It purports to be a piece of the hawser that was used in the towage when the Tug Umpqua Chief towed the Dredge Wishram from Coos Bay to Nehalem Bay.

Q. Where did you get that piece?

A. I got this piece from Lloyd Knapp in Coos Bay in February, 1946.

Mr. Snow: I want to offer that in evidence, but I will ask you another question. There might reasonably be an objection to this question on the part of counsel.

Q. Did you consult Mr. Lloyd Knapp on that trip? A. Yes, sir. [257]

Q. What, if anything, did Mr. Knapp tell you about the arrangement or attempted arrangement with Mr. Corgan about the towage of the Dredge from Nehalem Bay to Tillamook?

Mr. Winslow: I think that is going a little too far, your Honor. I think that is pure hearsay.

Mr. Snow: Your Honor, this would be hearsay

(Testimony of Wendell Wyatt.)

testimony. After all, it was shown by the testimony that Mr. Lloyd Knapp died.

The Court: Is there anything very vital? Does the statute authorize this?

Mr. Phillips: No.

Mr. Snow: This is no solemn declaration in apprehension of death.

The Court: Objection sustained.

Mr. Snow: That is all.

(Witness excused.) [258]

### OTTO BERG, JR.

having been previously duly sworn, was recalled as a witness on behalf of defendant and further testified as follows:

#### Direct Examination

By Mr. Snow:

Q. Referring to Exhibit No. 20, that piece of hawser which was brought in by Mr. Wyatt, is that the hawser that you started the towage with? Is that a piece of it?

A. That is a piece of it.

Q. You gave it to Mr. Wyatt, did you?

A. Yes.

Mr. Snow: That is all. I offer in evidence Pre-Trial Exhibit No. 20.

Mr. Phillips: Object to that on the ground it has no bearing on the case at all, in any way, shape or form.

The Court: Admitted, subject to the objection.

(Exhibit heretofore received in evidence.)

DEFENDANT'S EXHIBIT No. 7(3)

No. 89347

Assumed Business Name Certificate

Hugh Corgan, J. H. Corgan to Coast Dredging & Construction, Ltd. Assumed Business Name Certificate.

Know all men by these presents, that the real and true names and postoffice addresses of the persons conducting, having an interest in, or intending to conduct the business of Coast Dredging & Construction, Ltd. An estate in Joint Tenancy under the name or style of Coast Dredging & Construction, Ltd., at Tillamook, County of Tillamook, State of Oregon, are the following, to-wit:

Hugh Corgan, Postoffice address, Tillamook, Oregon; J. H. Corgan, Postoffice address, Tillamook, Oregon.

Witness our hands and seal this 23rd day of July, 1945.

[Seal]            H. CORGAN,  
[Seal]            J. H. CORGAN.

Seals not scrolled.

Executed in the presence of J. G. Vollmer.

(Testimony of Wendell Wyatt.)

testimony. After all, it was shown by the testimony that Mr. Lloyd Knapp died.

The Court: Is there anything very vital? Does the statute authorize this?

Mr. Phillips: No.

Mr. Snow: This is no solemn declaration in apprehension of death.

The Court: Objection sustained.

Mr. Snow: That is all.

(Witness excused.) [258]

OTTO BERG, JR.

having been previously duly sworn, was recalled as a witness on behalf of defendant and further testified as follows:

Direct Examination

By Mr. Snow:

Q. Referring to Exhibit No. 20, that piece of hawser which was brought in by Mr. Wyatt, is that the hawser that you started the towage with? Is that a piece of it?

A. That is a piece of it.

Q. You gave it to Mr. Wyatt, did you?

A. Yes.

Mr. Snow: That is all. I offer in evidence Pre-Trial Exhibit No. 20.

Mr. Phillips: Object to that on the ground it has no bearing on the case at all, in any way, shape or form.

The Court: Admitted, subject to the objection.

(Exhibit heretofore received in evidence.)



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Hugh Corgan, Postoffice address, Tillamook, Oregon; J. H. Corgan, Postoffice address, Tillamook, Oregon.

Witness our hands and seal this 23rd day of July, 1945.

[Seal]                      H. CORGAN,

[Seal]                      J. H. CORGAN.

Seals not scrolled.

Executed in the presence of J. G. Vollmer.

State of Oregon,  
County of Multnomah—ss.

Be It Remembered, that on this 23rd day of July, 1945 before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Hugh Corgan and J. H. Corgan who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

In Testimony Whereof, I have hereunto set my hand and Notorial seal the day and year last written.

FRED F. SEXTON,  
Notary Public for  
State of Oregon.

My commission expires 1/15/49.

Filed for record on the 28th day of July A. D.  
1945 at 8:40 o'clock a.m.

ESTHER LOCKE,  
County Clerk.

By VELEDE ABRAMS,  
Deputy.

Recorded in Assuming Business Record 2, Page  
427-8.

State of Oregon,  
County of Tillamook—ss.

I, Esther Locke, County Clerk and ex officio Clerk of the County Court of the County and State aforesaid, do hereby certify that the foregoing copy of Assumed Business Name Certificate: Hugh Corgan J. H. Corgan to Coast Dredging & Construction, Ltd., has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original as the same appears of record at my office and in my custody.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 1st day of June, 1946.

[Seal]      /s/ ESTHER LOCKE,  
Clerk.



ADDRESS				NAME			
(Self) #4				Dredge Acct. Wishram			
MEMO				TERMS			
				ACCOUNT NO.			
				SHEET NO.			
DATE	ITEM	FOL	DEBIT	DATE	ITEM	FOL	CREDIT
May 28	Expense to Portland # 3808		250		Cr. by Ch. Returned		
" 31	Borrowed from Frankie		1000		from Knapp's order		41574
June 6	" " "		675				
" 6	Cash from Iron Worker		3825				
" 8	Expense to Cass Bay #3832		40				
" 11	J. H. Corgan #3842		100				
" 12	" " #3848		300				
" 14	Till. Port. Truck Oct. 3844		162				
" 20	" " " 3848		17622				
" 23	From Frankie (L. 2nd)		1250				
" 28	Till. Port. Truck 3941		16306				
" 28	Corgan 3913		50				
July 1	Freight		1640				
" 12	Willetson Ship Rep. #3958		12676				
" 20	J. L. Vollmer (Inc. Rep. #3986		9915				
			800859				

PLAINTIFFS  
DEFENDANTS  
**EXHIBIT 7(4)**  
Case No. ....  
IRA G. HOLCOMB  
Reporter

DATE	ITEM	FOL	DEBIT	DATE	ITEM	FOL	CREDIT
July 28	Corgan #3996		6775				41574
" 28	" 3997		8225				
Aug 8	" 4015		150				
" 8	" 4016		75				
" 10	" 4020		450				
" 20	" 4035		250				
July 6-Aug 3	paid for men's wages from ship		24388				
			932747				
	Work done in July, Aug. Sept. Oct.		10837		Work done by Dredge Co.		20837
	Work done on cutter in Oct.		53453				
			1007037				62411

10107037  
622411  
944626





PLAINTIFFS  
DEFENDANT'S

EXHIBIT 7(11)

Case No. 3087

IRA G. HOLCOMB, Jr., et al.

Re: order

\$ 2925.00

For value received, We promise to pay to Frances M. Steinbach or order Two thousand nine hundred twenty five and 00/100 DOLLARS, in lawful money of the United States of America, of the present standard value, with interest thereon in like lawful money at the rate of \_\_\_\_\_ per cent per \_\_\_\_\_ from date until paid, payable in \_\_\_\_\_ installments of not less than \$ \_\_\_\_\_ in any one payment, together with the full amount of interest due on this note at time of payment of each installment. The first payment to be made on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and a like payment on the \_\_\_\_\_ day of \_\_\_\_\_ thereafter, until the whole sum, principal and interest has been paid, if any of said installments are not so paid, the whole of said principal sum and interest to become immediately due and collectible. And in case suit or action is instituted to collect this note, or any portion thereof, We \_\_\_\_\_ promise to pay such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

Due \_\_\_\_\_ 19\_\_\_\_

At Tillamook, Oregon

No. \_\_\_\_\_

*Testimony of Frances M. Steinbach  
by J. H. Steinbach  
D. E. Steinbach*

INSTALLMENT NOTE No. 161. The J. K. Gill Co., Portland, Oregon

ADDRESS		NAME		TERMS		LIMIT		ACCOUNT NO.		SHEET NO.	
Box #14 Chill		Frankie									
DATE	ITEM	FOL	V	DEBIT		ITEM	FOL	V	CREDIT		
May 31	Borrowed from Frankie	1000			7445	Cr. by Ch from Kinapp			4157	74	
June 1	"	675			Aug 17	Cr. by " #84			50920		
" 23	"	1250			Sept 20	" " #145 of Johnnie			925		
		2925			Oct 20	" " #225 for			150		
									200		

PLAINTIFFS  
DEFENDANT'S

EXHIBIT 7(14)

Case No. 3087  
IRA G. HOLCOMB

Reporter



DEFENDANT'S EXHIBIT No. 13

Tillamook, Oregon, May 31, 1945.

J. H. Corgan  
Portland, Oregon

Dear Hugh:

Enclosed is draft for one thousand dollars. In line with what was talked yesterday it is our understanding that we will form a corporation with you, Dave, and I each holding one third of the stock. Your son, Jimmie, will be given a share of stock by each of us although in order to make it come out right he should have four shares which would leave 32 shares to each one of us.

Dave is going to Wheeler and Nehalem this afternoon. Lewis was in the shop this morning. He didn't remember you but it was his son that went to school with Jimmie is the one that turned up missing when the cruiser Houston was sunk by the Japs.

Lewis is right up against it for dredging now. At low tide he can't get his logs in. We have been wondering if it might be wise to tow the dredge right in to our shop where she can be fitted with the cutter and tried out and then used here at Wheeler for a short period before taking her to Toledo. That is why Dave is going to Nehalem this afternoon to see if enough work could be lined up there to take several months.

Think it over. I know the first cost of towing clear to Tillamook would be higher than taking her

to Toledo but on the other hand if she was given a work out here it might saved us a lot rather than have to run back and forth between here to Toledo.

Very truly yours

J. L. STEINBACH.

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DEFENDANT'S EXHIBIT No. 14

"The Steinbach Iron Works"

Certificate of Assumed Business Name. No. 34913

Know All Men By These Presents: That J. L. Steinbach and D. E. Steinbach are engaged in business in the city of Tillamook, in the County of Tillamook and State of Oregon, under the assumed business name "The Steinbach Iron Works,".

That the true and real names and Postoffice adressesses of the only persons conducting, or having an interest in the said, "The Steinbach Iron Works, are as follows: J. L. Steinbach, whose Postoffice address is Tillamook, Oregon, and D. E. Steinbach, whose Postoffice is Tillamook, Oregon,

J. L. STEINBACH

D. E. STEINBACH

State of Oregon,

County of Tillamook—ss.

On this 15th day of November, A.D., 1920, personally came before a Notary Public in and for said County and State, the within named J. L. Steinbach and D. E. Steinbach, to me personally known to be

the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein named.

Witness my hand and Notarial seal this 15th day of November, 1920.

C. W. BARRICK,

Notary Public for Oregon.

My commission expires Nov., 14th, 1923.

Filed for record November 16, 1920 A.D. at 1:15 P.M.

[Seal]

HOMER MASON,

County Clerk.

By BERNICE E. RIPLEY,

Deputy.

State of Oregon,  
County of Tillamook—ss.

I, Esther Locke, County Clerk and exofficio Clerk of the County Court of the County and State afore-said, do hereby certify that the foregoing copy of Certificate of Assumed Business Name from J. L. Steinbach, D. E. Steinbach to "The Steinbach Iron Works" has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the name appears of record at my office and in my custody.

In Witness Whereof, I have hereunto set my





PLAINTIFFS' EXHIBIT No. 22

[Letterhead, War Department, Office of the  
District Engineer]

6 June 1945.

Captain Hugh Corgan,  
2944 N. E. 68th Street,  
Portland, Oregon.

Dear Sir:

Receipt is acknowledged of your certified checks for \$1,000 and \$4,500, full payment for the Dredge "Wishram" and equipment at the Kruse & Banks Shipyard, North Bend, Oregon.

Upon presentation of a copy of this letter to the Resident Engineer, U. S. Engineer Office, Empire, Oregon, he will deliver to you or your authorized representative, the property comprising the sale.

Very truly yours,

/s/ HORACE H. PERSON,

Captain, Corps of Engineers,  
Executive Officer.

## PLAINTIFF'S EXHIBIT No. 25

[Letterhead Addison P. Knapp Co.]

October 17, 1945

Captain Hugh Corrigan  
General Delivery  
Rockaway, Oregon

Dear Captain:

Emmett Rathbun has requested me to give you a quotation for extending the hull insurance policy covering the dredge "Wishram" while moving from Nehalem Bay to Tillamook Bay.

Generally speaking the marine underwriters will not cover outside trips of this nature after October 15. However, in view of the sort run I will take the responsibility of granting the coverage at 10 per cent, to return 8½ per cent upon safe arrival; if you will pick the weather and only make the trip when conditions are entirely safe.

It would of course, be necessary for us to have the dredge surveyed before she leaves Nehalem Bay so if you wish the protection, kindly advise in advance so that necessary arrangements can be made with a qualified surveyor.

Yours very truly,

/s/ ADDISON P. KNAPP.

APK:td

PLAINTIFFS' EXHIBIT No. 26-A

[Envelope]: From Addison P. Knapp Co., General Insurance, Suite 620 Henry Building, Portland 4, Oregon, to Captain J. H. Corgan, General Delivery, Garibaldi, Oregon.

[Postmarked]: Portland, Oreg., Oct. 30, 6:30 p.m. 1945.

This letter delivered to D. E. Steinbach on Nov. 7, 1945, 9:00 a.m., at General Delivery. Sanford S. Partridge, P. M.

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PLAINTIFFS' EXHIBIT No. 26-B

[Letterhead Addison P. Knapp Co.]

October 30, 1945

Captain J. H. Corgan  
General Delivery  
Garibaldi, Oregon

Dear Capt. Corgan:

In accordance with your recent instructions, we are sending you herewith endorsement applying to Universal Policy PC 50295 extending it to cover one trip of the Dredge "Wishram" while being towed from Nehalem Bay to Tillamook by the tug "Umpqua Chief".

Surveyor Rathbun has approved this tow only if made during calm weather. Under the circum-

stances, I trust you will be very careful in picking the weather for the trip.

Yours very truly,

/s/ ADDISON P. KNAPP.

APK:td

Encl.

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PLAINTIFFS' EXHIBIT No. 26-C

Endorsement

Suction Dredge "Wishram"

For and in consideration of an additional premium of \$1250 the within policy is hereby extended to cover one trip from Nehalem Bay to Tillamook Bay in tow of the tug "Umpqua Chief". In event of safe arrival of the insured dredge at Tillamook Bay and no claim resulting from damage sustained during voyage insured by this endorsement the Assureds shall be entitled to a return of \$1062.50 from the Underwriters.

After arrival at Tillamook Bay insured dredge shall be warranted confined to the waters of Tillamook Bay and its tributaries.

All other terms and conditions of this policy remaining unchanged.

This slip is attached to and forms part of Policy No. PC 50295 of the Universal Insurance Company issued to Frances M. and Carolyn S. Steinbach. Dated at October 24, 1945.

ADDISON P. KNAPP CO.,

/s/ ADDISON P. KNAPP.

PLAINTIFFS' EXHIBIT No. 27-A

[Envelope]: From Addison P. Knapp Co., General Insurance, Suite 620 Henry Building, Portland 4, Oregon, to Mrs. Frances M. Steinbach, Mrs. Carolyn S. Steinbach, Steinbach Blacksmith & Machine Shop, Tillamook, Oregon.

[Postmarked]: Portland, Oreg., Nov. 30, 6:30 p.m., 1945.

This envelope contain check No. 6267 from Addison P. Knapp Co. together with letter date Nov. 30, 1945.

/s/ D. E. STEINBACH.

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PLAINTIFFS' EXHIBIT No. 27-B

[Letterhead Addison P. Knapp Co.]

November 30, 1945

Mrs. Frances M. Steinbach,  
Mrs. Carolyn S. Steinbach,  
Steinbach Blacksmith & Machine Shop,  
Tillamook, Oregon.

Dear Mesdames:

We are sending you, herewith, our check No. 6267 payable to your order in amount of \$187.50. This is refund of remittance forwarded to our office by James H. Corgan under date of October 30, 1945.

The Universal Insurance Company has refused to accept this remittance as applying to any portion

of the additional premium of \$1,250 set forth in endorsement to its Policy No. PC 50295, dated October 24, 1945. The company's reason for being unwilling to accept the remittance is based on the fact that the Suction Dredge "Wishram" was not towed from Nehalem Bay to Tillamook Bay by the tug "Umpqua Chief" as called for by the endorsement.

We recently submitted certain facts concerning the loss of the dredge on November 1, 1945 to the San Francisco office of the insurance company, and have just been instructed by that office to inform you that inasmuch as the policy conditions were not complied with, they find it necessary to deny all liability for the loss under Universal Policy No. PC 50295.

We greatly regret that the insurance company finds it necessary to deny liability in this case.

Very truly yours,

ADDISON P. KNAPP CO.

By /s/ ADDISON P. KNAPP.

APK:pks

Encl.



PLAINTIFFS' EXHIBIT No. 28

Corbettxxxx

December 13, 1945.

Addison P. Knapp Co.,  
General Insurance,  
620 Henry Building,  
Portland, 4, Oregon.

Dear Sirs:

Enclosed herewith please find your check No. 6267, dated November 30, 1945, payable to Frances M. Steinbach and Carolyn S. Steinbach, in the sum of \$187.50, which I am returning to you.

The amount represented by said check, to-wit: \$187.50, represents premium paid for Universal Policy-PC 50295, together with endorsement to cover the Dredge "Wishram."

The insured under said policy insist that they be paid for the loss of the "Wishram" in accordance with the coverage as provided by your policy of insurance issued to the insured, and for which the premiums were duly paid.

Yours very truly,

.....

Enc.

FJL:lj

## PLAINTIFFS' EXHIBIT No. 29

[Letterhead MacCormac Snow]

December 27, 1945

Hon. Frank J. Lonergan  
Corbett Building  
Portland 4, Oregon

Dredge Wishram

Dear Judge Lonergan:

This will refer to our telephone conversation and my promise to write you on behalf of Universal Insurance Company in answer to your letter of December 13, 1945, addressed to Addison P. Knapp Co.

The latter company, as agent of the insurance company, sent their check for \$187.50 to your client for the reason that Universal Policy PC 50295 did not cover the Wishram in respect to the damage which this dredge suffered, and therefore no part of this premium was payable. Since your client paid the Knapp Co. \$187.50 on account of this premium, Mr. Knapp returned this money in the form of the above check. Upon return of the check with your letter of December 13, Mr. Knapp handed the check to me and I now have it.

Since we cannot be sending this check back and forth, I suggest that it rest either in your files or mine upon a stipulation that such disposition of

the check shall prejudice neither your clients in the prosecution of any claim they see fit to make against the insurance company, nor the insurance company in the defense of any such claim, and that all parties waive tender by check rather than by United States money.

I await your advice concerning the proposed stipulation.

Yours very truly,

/s/ MacCORMAC SNOW.

MS/ml



96-101 TILLAMOOK BRANCH 96-101  
 THE FIRST NATIONAL BANK OF PORTLAND

TILLAMOOK, OREGON

19 45 No.

PAY TO THE  
 ORDER OF

THE FIRST NATIONAL BANK OF PORTLAND, TILLAMOOK BRANCH

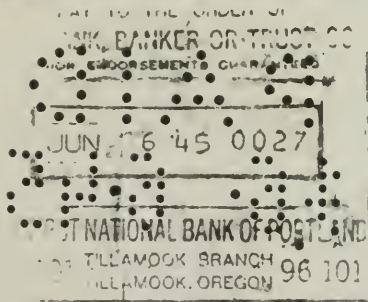
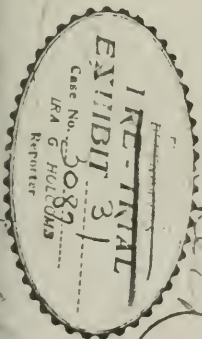
\$ 675. <sup>60</sup>/<sub>100</sub>

Six hundred seventy five & <sup>60</sup>/<sub>100</sub> DOLLARS

For  
 Certified Check )

Frances M. Steinbach

1176U







66-101 TILLAMOOK BRANCH 96-101  
 THE FIRST NATIONAL BANK OF PORTLAND

TILLAMOOK, OREGON 25 1945 No.

PAY TO THE ORDER OF Addison Knapp Co. \$ 1250.<sup>00</sup>

One thousand two hundred fifty ~~no~~ <sup>no</sup> DOLLARS

Insurance on  
 bridge Fishcam  
 from Cross Bay to  
 Nehalem Bay

Frances M. Steinbach

PRE-TRIAL  
 EXHIBIT 32  
 Case No. 3087  
 JIM G. HOLDEN  
 Reporter

ALL PAYMENTS TO BE MADE THROUGH THE PORTLAND CLEANSING HOUSE  
 PAY TO THE ORDER OF THE  
 ANY BANK OR TRUST CO.  
 OR THROUGH THE PORTLAND CLEANSING HOUSE  
 PRIOR TO DEPOSIT INTO THE BANK OF OREGON  
 24-11-45  
 11760

PAY TO THE ORDER OF  
 THE UNITED STATES NATIONAL BANK  
 3723 PORTLAND, OREGON 3723  
 ADDISON P. KNAPP CO.

11760



# Coast Dredging & Construction Ltd.

Tillamook, Oregon

No. 43

TILLAMOOK, OREGON, October 30 1945

PAY TO THE ORDER OF

Addison P. Knapp

\$ 187<sup>50</sup>

One Hundred eighty seven and 50/100

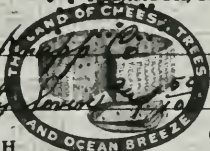
DOLLARS

TO TILLAMOOK BRANCH  
THE FIRST NATIONAL BANK OF PORTLAND

96-101 TILLAMOOK, OREGON — 96-101

Coast Dredging & Construction Ltd.

BY J. H. Morgan



PAY TO THE ORDER OF  
THE UNITED STATES NATIONAL BANK  
3723 PORTLAND, OREGON 97203  
ADDISON P. KNAPP CO.

Pay to the order of Bank or Banker or Clearing House  
ALL PRIOR ENDORSEMENTS GUARANTEED  
NOV 8 1945  
24-1 POI  
FEDERAL RES  
24-1  
SAN FRANCISCO

THE UNITED STATES NATIONAL BANK  
24-11 PORTLAND, OREG. 24-11  
NOV 8 1945  
PRIOR ENDORSEMENTS GUARANTEED  
ANY BANK OR TRUST CO.  
OR THROUGH THE CLEARING HOUSE  
PAY TO THE ORDER OF

11760

PLANTERS  
DISBURSANTS  
TRE - TRIAL  
EXHIBIT 33  
Case No. 587  
IRA G. HOLCOMB  
Recorder



PLAINTIFFS' EXHIBIT No. 34-A

[Envelope]: To Jimmy Corregon, Rockaway, Ore.

[Postmarked]: Bay City, Oreg., Oct. 19, 12 m., 1945.

PLAINTIFFS' EXHIBIT No. 34-B

Garibaldi, Ore.

Jimmy Corregon  
Rockaway, Ore.

Dear Sir:

Sorry I didn't get to see you yesterday but it was too late when we returned from Astoria.

About that tow job, perhaps you'd better scout around for another boat. I talked with several around here and learned that they charge \$75 for just towing one of those rafts from Tillamook to Garibaldi—no bars to cross. Curt Sause said he would ask \$300. I thot that a little high. But with 4 bar crossings this time of year I feel \$100 too little for the risk—I'd say \$200.

I have to go to Depoe Bay but will be back Monday. If you haven't found other means by then maybe we can work something out.

Yours—

/s/ REA DAVENPORT.

## PLAINTIFFS' EXHIBIT No. 37

[Statement Addison P. Knapp Co.]

October a/c 1945

Frances M. & Carolyne S. Steinbach  
 c/o Captain J. H. Corgan  
 General Delivery  
 Garibaldi, Oregon

October 24th—Universal Policy PC 50295—Dredge  
 “Wishram”

Additional Nehalem to Tillamook.....	\$1250.00
To be returned safe arrival, no claim..	\$1062.50
	<hr/>
Premium in event no claim.....	\$ 187.50

## PLAINTIFFS' EXHIBIT No. 39

[Letterhead Emmett Rathbun]

Report of the investigation of the total loss of the Dredge “Wishram” at the entrance of Tillamook Bay on November 1, 1945.

The Dredge “Wishram” was in tow of the G.F.B. “Julia D” at the time of the accident. The tow had left Nehalem Bay November 1, 1945 and was proceeding to Garibaldi, Oregon in Tillamook Bay. The Dredge “Wishram” was wrecked approximately 100 feet inside the Jetty at Tillamook Bay and became a total loss. The dredge was washed up onto the Jetty and salvage operations were im-



possible. The sea completed the destruction of the dredge.

The investigation as to the events prior to the accident were secured from Chief Paris of the U. S. Coast Guard, Tillamook Bay Station, Otto Berg owner and operator of the "Julia D" the towing vessel, Captain Corigan and his son Jim Corigan, operators of the dredge.

From Chief Paris of the U. S. Coast Guard, Tillamook Bay Station, the following chronological report of the events leading up to the loss of the dredge was secured:

At 8:30 a.m. November 1, 1945 Captain Corigan called the U.S. Coast Guard Station, Tillamook Bay and advised them that the gas fishing vessel "Julia D" would undertake the towing of the dredge "Wishram" from Nehalem Bay, Oregon to Tillamook Bay, Oregon, a tow of approximately 11 miles that morning and requested that the Coast Guard dispatch one of their boats to stand-by the tow from Nehalem Bay to Tillamook Bay. The Coast Guard boat arrived at the entrance of Nehalem Bay at 9:45 a.m. The tow crossed out over the Nehalem Bay bar at 9:45 a.m.

Weather—Bar smooth—wind 2 miles velocity South—high water at 11:30 a.m. tide ebbing. No storm warnings. There were storm warnings hoisted from the Columbia River North after 1:30 p.m.

Tow arrived at Tillamook bar ready for the crossing at 1:00 p.m. Tide ebbing. Wind velocity 2 miles South. Sea strong. At 1:25 p.m. tow rope broke.

Tow on the bar. Dredge drifted north towards Jetty. Coast Guard assisted in recovering the dredge and the tow line was again secured to the tow.

2:04 p.m.—Tow again started across the bar. Wind velocity had increased 11 to 16 mile velocity, sea strong, tide ebbing. Tow rope broke. Dredge drifted North towards North Jetty. Coast Guard assisted in recovering dredge. The tow line again secured to the dredge.

2:39 p.m.—Tow started across bar. 11-16 wind velocity from South. Sea strong—tide ebbing. Tow rope broke. Coast Guard assisted in securing dredge. Otto Berg, Captain of the towing vessel refused to continue with the present tow line. He asked the Coast Guard to secure another line. Tow laid to in the wind.

4:00 p.m.—Coast Guard returned to Tillamook Bay Station and secured a tow line—4" rope line approximately 600 feet long. Returned to the tow at 5:00 p.m. Tide at 5:00 p.m. low water slack, sea strong, wind velocity 11-16 miles.

5:30 p.m.—Coast Guard put man from the towing vessel on to Dredge. This man secured the towing line. Chief Paris was now in command of the Coast Guard vessel. During the wait, the tow had drifted North approximately one mile near Twin Rocks, Oregon. The Captain of the towing vessel was waiting for the tide to flood.

5:45 p.m.—Raining, dark, wind velocity 11-16 miles, sea strong, tide flooding. Captain of towing

vessel could not see can buoy off Tillamook entrance, asked Coast Guard to find the can buoy and guide him to it. The towing vessel had to pull against the wind and heavy north sea. Coast Guard came back and forth from tow to can buoy at the entrance of Tillamook Bay bar.

6:00 p.m.—Tow arrived at can buoy and made ready to come in. Tide flooding, dark, raining, 11-16 miles wind velocity, South bar strong. Coast Guard went ahead of tow. 6:00 p.m. crossing.

6:30 p.m.—“Julia D” inside entrance to the bar. Dredge “Wishram” trailing behind approximately 600 feet. Dredge “Wishram” just outside the Jetty.

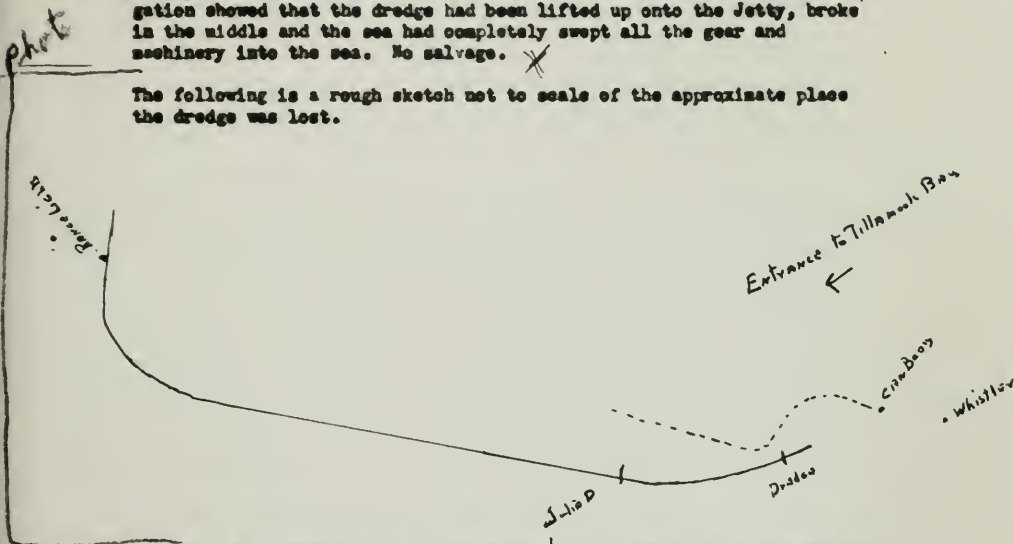
6:35 p.m.—Captain of “Julia D” called to Coast Guard that the dredge had grounded on North Jetty. The towing line broke and he said that his engine was stalled. Tug with stalled engine drifted towards North Jetty.

6:37 p.m.—Coast Guard approached the “Julia D”. On approaching the tug the Captain of the tug in his excitement threw a line over the stern which nearly fouled the propeller of the Coast Guard boat, the line did not get aboard. Coast Guard pulled away and made second attempt, by this time the tug was on the North Jetty, the Coast Guard put a line aboard the tug, pulled her off the North Jetty and towed her in to Garibaldi, Oregon.



By this time the wind velocity had increased, the Bar was heavy and no attempt could be made to get to the dredge. The next morning investigation showed that the dredge had been lifted up onto the Jetty, broke in the middle and the sea had completely swept all the gear and machinery into the sea. No salvage. ✕

The following is a rough sketch not to scale of the approximate place the dredge was lost.



From the above sketch it is evident that the accident occurred after the dredge had passed over the bar and was approximately 100 feet inside the end of the Jetty.

Berg From Otto Berg the owner and Captain of the "JULIA D" the following facts were secured.

"JULIA D" 36' long - 10.8' beam - 5 foot draft - 8 tons net - 110 h.p. Chrysler Crown gas motor. 3 $\frac{1}{2}$  to 1 reduction gear throwing a 30" X 24" propeller. 3.46

Built - 1942 by Sessions at Bay City, Oregon

Gas Screw trolling vessel

Captain Corigan, operator of the Dredge "WISHRAM" contacted Otto Berg on October 31, 1945 asking him if he would undertake the towing of the Dredge "WISHRAM" from Nehalem Bay to Tillamook Bay. Otto Berg said he would undertake the job if Captain Corigan would furnish the tow line and also move the dredge down the bay to the inside entrance of Nehalem Bay. The above move was to save time and daylight.





On Berg's arrival at Nehalem Bay, he found that the dredge had not been moved down the bay but was moored at the shingle mill [Brighton Shingle Co.] at Wheeler, Oregon. Berg proceeded to the dredge. Captain Corigan brought out a hemp towing line which he said he borrowed from the Coast Guard. It was about  $1\frac{1}{2}$ " diameter, had been spliced and was frayed, it was approximately 400 feet long. Berg had provided a bridle on his boat. It ran from the bitt forward around each side of the pilot house and came together approximately 5 feet from the after end of his house which would bring the two lines together about amidship on Berg's boat. This bridle was from  $1\frac{1}{2}$ " to  $1\frac{3}{4}$ " diameter. The bridle on the dredge was well fastened and of sufficient strength. Neither bridle broke during the tow. The hemp hawser used as a tow line was fastened to each bridle and the tow started out.

After clearing the Nehalem Bar the towing rope broke at the bridle of the dredge. It was again secured and the tow proceeded to Tillamook Bay entrance. Again (several times Berg said) the towing hawser broke near the "whistler" at the entrance to Tillamook Bay before the first attempt to cross the bar was made. Berg's version corresponds with the chronological story of the Coast Guard from there on. He stated that after the third attempt at the crossing he refused to make another try until a new towing line was secured. This was done.

He also stated that he did not ask the Coast Guard to help him as he felt that he could make it in to Tillamook Bay without their help. If he turned

the tow over to the Coast Guard he would have to relinquish responsibility and he did not want to do that. Besides he stated he had more power than the Coast Guard. He stated that he did get the dredge over the bar and would have come in but as the dredge passed the end of the Jetty a patch of white water hit the dredge, throwing the dredge against the North Jetty.

He also stated that the tow line did not break until the dredge hit the Jetty and the cause of his engine failure was that the tow rope fouled his propeller. He tried to start the motor and it would not start. He found the cause was the fact that in his excitement, he did not throw his gear out and the motor would not start in gear.

Captain Corigan and his sone Jim Corigan could not add to any of the above facts as they were not with the tow.

The dredge is a total loss.

Damage to the "Julia D" the towing vessel.

Two hull planks cracked

Keel split

Wheel bent

Shaft—to be checked for alignment.

/s/ EMMETT RATHBUN,  
Surveyor.

[Endorsed]: No. 11760. United States Circuit Court of Appeals for the Ninth Circuit. Universal Insurance Company, a corporation, Appellant, vs. Frances M. Steinbach, also known as Francis M. Steinbach, and Carolyn S. Steinbach, Appellees.

Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed October 17, 1947.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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United States Circuit Court of Appeals  
for the Ninth Circuit

Civil No. 11760

UNIVERSAL INSURANCE COMPANY,  
a corporation,

Appellant,

vs.

FRANCIS M. STEINBACH and  
CAROLYN S. STEINBACH,

Appellees.

UNIVERSAL INSURANCE COMPANY,  
a corporation,

Third-Party Plaintiff,

vs.

OTTO BERG and OTTO BERG, JR.,

Third-Party Defendants.

POINTS ON APPEAL AND DESIGNATION

To the Clerk of the above entitled Court:

The appellant hereby adopts as his concise statement of the points on which he intends to rely on

this appeal his statement of such points heretofore filed with the Clerk of the United States District Court for the District of Oregon and hereby designates the portions of the record on appeal which said appellant thinks material to the appeal and requests the Clerk of said appellate court to print only the portions hereinafter designated. Referring to appellants designation of the parts of the record in the said District Court to be included in the record on appeal and to the numbered items thereof, appellant requests the Clerk of said appellate court to print only the following

Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 16, 17, 20, 21, 22, 23, 24, 25 and 26.

Exhibits 3, 4, 11 and 14 attached to Pre-trial Exhibit 7 which exhibit forms item 11 of said designation.

This statement and designation.

The following portions of item 10 of said designation, each line number being inclusive and each line so numbered being included in the portions to be printed and the page numbers referring to numbers placed on said transcript in blue ink by use of a numbering machine:

From line 1, page 2	to line 15, page 9
From line 1, page 14	to line 11, page 51
From line 17, page 56	to line 17, page 58
From line 1, page 59	to line 7, page 66
From line 5, page 72	to line 19, page 74
From line 11, page 80	to line 7, page 86
From line 10, page 88	to line 22, page 88

From line 6, page 95 to line 12, page 97  
From line 5, page 102 to line 4, page 112  
From line 1, page 115 to line 3, page 116  
From line 5, page 118 to line 21, page 121  
From line 9, page 125 to line 11, page 125  
From line 18, page 130 to line 7, page 141  
From line 7, page 147 to line 26, page 147  
From line 1, page 148 to line 17, page 177  
From line 4, page 181 to line 9, page 181  
From line 19, page 185 to line 24, page 185  
From line 1, page 226 to line 17, page 259

/s/ MacCORMAC SNOW,  
Attorney for Appellant.

Service of the within statement and designation  
is admitted this 10th day of November, 1947.

/s/ W. K. PHILLIPS,  
Of Attorneys for Appellees.

/s/ B. G. SKULASON,  
Attorney for Third-Party  
Defendant.

[Endorsed]: Filed Nov. 14, 1947.







